

**1501. GENERAL PROVISIONS**

1501.1 The provisions of this chapter are intended to be consistent with the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.*). If there is any conflict between this chapter and the District of Columbia Administrative Procedure Act, the District of Columbia Administrative Procedure Act shall govern.

1501.2 If there is any conflict within this chapter, provisions of specific application shall supersede those of general application.

**1502. NOTICE OF AN APPLICATION FOR A NEW LICENSE, RENEWAL OF A LICENSE, OR TRANSFER OF A LICENSE TO A NEW LOCATION**

1502.1 The provisions of this section shall govern notice to the public of all applications for new licenses, renewals, or a transfer to a new location, including Manufacturer, Wholesaler, and Retailer licenses, but shall not apply to Solicitor's licenses, Manager's licenses, Caterer's licenses, or to Temporary licenses.

1502.2 Upon acceptance of an application, the Board shall establish the date for a roll call hearing on the application, which shall be at least forty-five (45) days after the application is accepted.

1502.3 At least forty-five (45) calendar days prior to the roll call hearing, the Board shall give notice of an application to the entities set forth in D.C. Official Code § 25-421(a).

1502.4 All fees associated with the newspaper advertisement required by D.C. Official Code § 25-422 shall be paid for by the applicant. Proof of payment must be submitted to the Board before placards will be provided to the applicant for posting.

1502.5 At least forty-five (45) days before the roll call hearing, the applicant shall post at least two (2) notice placards, provided by the Board, on the main entrance doors to the premises so as to be visible from the street, or on such other place on the premises as designated by the Board.

1502.6 The Board shall inspect the premises at least once before the date of the roll call hearing specified on the notice in order to ensure that the placards continue to be prominently and visibly displayed to the public. If the placards have been removed or are posted in a manner not visible from the street, the establishment shall be re-advertised and replacarded for a further forty-five (45) calendar day period.

1502.7 Notwithstanding the minimum forty-five (45) calendar day protest period, the applicant shall leave the placards posted until the roll call hearing date set out on the placards.

**1503. NOTICE OF A SUBSTANTIAL CHANGE IN THE OPERATION OF A LICENSED ESTABLISHMENT**

1503.1 Before a licensee makes a change in the nature of the operation of a licensed establishment which may be determined to be a substantial change, the licensee shall file with the Board a proposal to amend his or her most recent application to reflect the proposed changes.

1503.2 Upon receipt of an application amendment, the Board, in its sole discretion, shall determine whether the change is substantial, and shall notify the licensee of its decision within thirty (30) calendar days of receipt of the application amendment.

1503.3 A fact-finding hearing may be held in the discretion of the Board to determine whether the change is substantial.

1503.4 Whenever the Board determines that the change is substantial, the Board shall give notice, as required in D.C. Official Code § 25-404.

**1504. NOTICE OF TRANSFER OF A LICENSE TO A NEW OWNER**

1504.1 Notice to the public of any change in the ownership of a licensed establishment shall be in accordance with this section.

1504.2 If a license transfer to a new owner occurs, as set out in D.C. Official Code § 25-405, and the new owner proposes to make substantial changes to the establishment, notice of the change in ownership and the change in operation shall be made in the same manner as set out in D.C. Official Code § 25-404.

**1505. PRESUMPTIONS OF APPROPRIATENESS**

1505.1 There shall be a presumption that a license is appropriate for an establishment if, after public notice is given under this chapter, no objection to the license is filed with the Board.

1505.2 There shall be a presumption that a substantial change in the nature of the operations of a licensed establishment is appropriate, if after public notice is given under this chapter, no objection to the change is filed with the Board.

1505.3 Objections may be made by means of a protest, as set out in § 1605, or by Referendum petition, as set out in Chapter 18 of this title.

**CHAPTER 16. CONTESTED HEARINGS, NON-CONTESTED HEARINGS, PROTEST**

**HEARINGS AND PROCEDURES****SUBCHAPTER 1.****1600. APPLICABILITY**

1600.1 The provisions of this chapter shall govern the following items:

- (a) Roll call hearings or status hearings regarding the issuance, transfer, or renewal of a license, or the making of substantial changes to a licensee's business operations under authority of the Act;
- (b) Protest hearings regarding the issuance, transfer or renewal of a license, or the making of substantial changes to a licensee's business operations under authority of the Act;
- (c) Fact-finding hearings on any matter governed by the Act regarding an applicant for a license or a licensee; and
- (d) Show cause hearings, summary suspension hearings or summary revocation hearings regarding the revocation or suspension of a license issued under the Act.

**1601. GENERAL PROVISIONS**

1601.1 The Board may, for good cause shown and in the interest of justice or to prevent hardship, waive any provision of this chapter which is not required by the Act in any proceeding after duly advising the parties of its intention to do so.

1601.2 The following hearings held before the Board shall be considered to be contested cases:

- (a) Protest hearings;
- (b) Show cause hearings;
- (c) Summary suspension or summary revocation hearings;
- (d) Cease and desist hearings; and
- (e) Safekeeping hearings

1601.3 The following hearings held before the Board shall not be considered to be contested cases:

- (a) Fact-finding hearings; and

(b) Moratorium hearings and other rulemaking hearings

1601.4 The provisions of this chapter are intended to be consistent with the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.*). If there is any conflict between this chapter and the District of Columbia Administrative Procedure Act, the District of Columbia Administrative Procedure Act shall govern.

1601.5 If there is any conflict within this chapter, provisions of specific application shall supersede those of general application.

**1602. ROLL CALL HEARING**

1602.1 Before any license is issued, renewed, or transferred to a new location, and before any substantial change to the operations of a licensed establishment may be made, the Board shall provide notice to the public pursuant to the notice requirements set forth under §§ 1502, 1503, and 1504. Notice provided to the public shall specify the information required by D.C. Official Code § 25-423(b), including the final day of the protest period and the license application's roll call hearing date. For purposes of this section, the term "roll call hearing" shall have the same meaning as the term "administrative review" defined in D.C. Official Code § 25-431(h).

1602.2 The roll call hearing shall be a non-adversarial proceeding held by the Board at which a list of applications for the licensing actions set out in § 1605.1 and the names of protestants who have filed an objection pursuant to D.C. Official Code § 25-601 shall be read to the public.

1602.3 If no written objection to an application has been received by the Board during the protest period, the Board shall consider the application within ten (10) calendar days after the end of the protest period. An objection must be received by the Board prior to the end of the protest period to be considered timely filed.

1602.4 If an objection, in the form of a protest or by Protest Petitions (as set forth in § 1800.2 of this title), has been received by the Board during the protest period, the person reading the roll at the roll call hearing shall so state and the Board shall set a date for either a status hearing or a protest hearing to receive testimony and evidence regarding the objection. No action on the application shall be taken until the Board issues its final decision on the protest, as set forth in § 1718 of this title.

1602.5 If an objection has been noted by the initiation of the Referendum Petition process, as set out in § 1800.3 of this title, the person reading the roll shall so state and the Board shall state to the applicant and to the initiator of the petition the manner in which the petition process must proceed, in accordance with § 1803 of this title. No action on the application shall be taken until the petition process has been concluded.

1602.6 Each applicant, and each person submitting a protest or each person initiating the Referendum Petition process shall attend the roll call hearing in person or appear through a

designated representative, as set out in § 1803 of this title.

1602.7 Failure to appear in person or through a designated representative may result in denial of the license application, dismissal of a protest, or denial of the right to circulate Referendum Petitions unless, in the discretion of the Board, good cause is shown for the failure to appear. A request for reinstatement with the Board must be filed within ten (10) days of the dismissal or denial date.

1602.8 If the Board determines that the placards posted at an applicant's premises pursuant to D.C. Official Code § 25-423 have not remained visible to the public for a full forty-five (45) calendar days, up to and including the date of the roll call hearing, the Board shall reschedule the roll call hearing for a date at least forty-five (45) calendar days after the originally scheduled hearing.

1602.9 If a rescheduling is ordered, the applicant shall post new placards for a forty-five (45) calendar day period and no action on the application shall be taken until the rescheduled roll call hearing date.

1602.10 Whenever a rescheduling is ordered, further protests may be filed or the Referendum Petition process may be initiated until fifteen (15) business days before the scheduled roll call hearing date.

### **1603. STATUS HEARING**

1603.1 The status hearing is a non-adversarial proceeding held by the Board at which the parties inform the Board of their progress in reaching a cooperative/voluntary agreement.

1603.2 The Board in its discretion may set a protest hearing or another status hearing if the Board believes that the parties are close to reaching a cooperative/voluntary agreement or that mediation might be helpful.

1603.3 Failure to appear in person or through a designated representative may result in denial of the license application, dismissal of a protest, or denial of the right to circulate referendum petitions unless, in the discretion of the Board, good cause is shown for the failure to appear. A request for reinstatement with the Board must be filed within ten (10) days of the dismissal or denial date.

## **SUBCHAPTER II. CONTESTED CASES**

### **1604. SHOW CAUSE HEARINGS**

1604.1 Whenever the Board has reasonable cause to believe that any license or permit should be fined, revoked, or suspended pursuant to Chapter 8 of Title 25 of the D.C. Official Code, it shall notify the person to whom the license or permit was issued by personal service or certified mail

at the last address recorded by that person with the Board, citing that person to appear before the Board not less than thirty (30) days thereafter. The notice shall state the time and place set by the Board for the hearing.

1604.2 The licensee or permittee shall appear in his or her defense in person and may have representation by counsel or other designated representative, and shall be entitled to offer evidence before the Board with respect to the charges.

1604.3 If the person whose license or permit is sought to be fined, revoked, or suspended waives the hearing or fails to appear at the time and place set for the hearing, the Board may proceed *ex parte*, unless the Board extends the time for the hearing.

1604.4 The Board shall make its findings of fact based upon the evidence which has been presented to it.

1604.5 The Board may, in its discretion, accept from both (1) the licensee or permittee and (2) the Office of the Corporation Counsel or the prosecuting entity an offer in compromise and settlement to resolve the charges brought at the show cause hearing by the District of Columbia against the licensee. An offer in compromise and settlement may be tendered to the Board at any time prior to the issuance of a decision by the Board on the contested matter.

1604.6 An offer submitted by the parties and accepted by the Board shall constitute a waiver of appeal and judicial review.

1604.7 Any fines collected by the Board shall be paid forthwith, unless otherwise ordered by the Board, to the D.C. Treasurer and credited to the General Fund.

1604.8 The issuance of an advisory opinion by the Board pursuant to § 1902 of this title may also result in the issuance of a show cause notice under this section.

## **1605. FILING A PROTEST**

1605.1 Only those individuals or entities listed in D.C. Official Code § 25-601 may file a protest against:

- (a) The issuance of a new license;
  - (b) The renewal of an existing license;
  - (c) The transfer of a license to a new location;
  - (d) Substantial changes to the nature of the operations of a licensed establishment;
- and

(e) Changes in license classes.

1605.2 All protests shall be in writing, shall be received by the Board prior to the end of the protest period, and shall state, as grounds for the protest, why the matter being objected to is inappropriate under one (1) or more of the appropriateness standards set out in D.C. Official Code §§ 25-313 and 25-314 and § 400 of this title.

1605.3 All protests shall be signed by the protestant and contain the protestant's full name and mailing address.

1605.4 The Board may require protestants to appear before the Board for the purpose of determining that a sufficient number of individuals exist to have standing pursuant to D.C. Official Code § 25-601.

1605.5 In addition to, or instead of, filing a protest, any person may circulate or sign Protest Petitions in opposition to any of the licensing actions listed in § 1605.1.

#### **1606. PROTEST HEARINGS**

1606.1 Whenever any objection is filed to any of the licensing actions set out in § 1605.1, whether by protest or by submission of Protest Petitions, the Board shall hold an adjudicatory proceeding, known as a "protest hearing," for the purpose of receiving evidence and testimony regarding the appropriateness of the licensing action.

1606.2 The parties to a protest hearing shall be the applicant or licensee and the protestants. For the purpose of this section, "protestant" shall mean any eligible person, group, ANC, government agency or organization with standing under D.C. Official Code § 25-601 that has submitted a written protest or who has circulated a Protest Petition.

1606.3 At the protest hearing, an applicant or licensee may give a brief opening statement summarizing the evidence and testimony he or she intends to produce regarding the appropriateness of the application or license at issue. Thereafter, the protestant may give a brief opening statement summarizing the evidence he or she intends to present to rebut or overcome the evidence and argument presented by the applicant or licensee.

1606.4 At the conclusion of the opening statements, the Board shall call its own witnesses, if any, who shall testify to the results of their investigation into the appropriateness of the establishment.

1606.5 At the conclusion of testimony by the Board's witnesses, if any, the applicant shall call its witnesses to give testimony and present evidence regarding the appropriateness of the establishment, as set forth in § 400 of this title.

1606.6 At the conclusion of testimony by the applicant's witnesses, the protestant shall call

witnesses to give testimony and present evidence which rebuts, or contradicts, the evidence and testimony presented by the applicant.

1606.7 All witnesses shall testify under oath and shall be subject to questioning by the Board and to cross-examination by the opposing party.

1606.8 In any case where there is more than one (1) protestant, the Board, in its discretion, may require the protestants to confer among themselves and designate one (1) person to conduct the protestants' case, to give the opening and closing statements, and to cross-examine the applicant's witnesses.

#### **1607. ESTABLISHMENT OF GEOGRAPHIC BOUNDARIES**

1607.1 The six hundred foot (600 ft.) radius shall be established by the Board for the purpose of notifying the public of the area from which Referendum Petition signatures may be drawn.

1607.2 Upon recognition by the Board of a properly filed protest at a roll call hearing, the applicant shall be required to select one of the geographic areas listed below that the applicant proposes be considered in determining the appropriateness of the establishment. The applicant shall submit the proposed boundaries to the Board and the protestants no later than ten (10) calendar days after the roll call hearing. The applicant shall be deemed to have selected the "locality" geographic area should it fail to submit boundaries to the Board within the ten (10) calendar day period.

1607.3 Any protestant may object to the area and boundaries proposed by an applicant by filing a written objection with the Board no later than ten (10) calendar days after receipt of the applicant's proposed boundaries. The objection shall also be served on the applicant by any of the means set out in § 1703 of this title. The objection shall state in detail the following:

- (a) The reasons for objecting to the boundaries proposed by the applicant;
- (b) The boundaries proposed by the Objector; and
- (c) The reasons why the Objector's boundaries should be adopted by the Board.

1607.4 If the applicant wishes to contest the boundaries proposed by the objector, he or she shall submit to the Board in writing the reasons why the boundaries originally proposed should be adopted by the Board.

1607.5 The applicant's submission shall be served on the objector by any of the means set out in § 1703 and received by the Board no later than eight (8) calendar days after receipt of the applicant's submission.

1607.6 Any objector or applicant who makes a submission to the Board pursuant to §§ 1607.2,



1607.3, 1607.4, or 1607.5, may forward written argument or documentary evidence to the Board in support of the boundaries he or she proposes.

1607.7 The Board, pursuant to D.C. Official Code § 25-312(b), shall determine, on a case-by-case basis, the size of the area relevant for the appropriateness review. In making this determination, the Board shall consider the overall characteristics of the area, including population, density, and general commercial and residential activities.

1607.8 For the purpose of determining the appropriateness of a license, regardless of whether Referendum Petitions are filed, the geographic areas to be considered by the Board shall be measured pursuant to § 101.1 and shall be as follows:

- (a) A "locality," which shall be the immediate neighborhood of the establishment and whose boundary shall be at a distance of six hundred feet (600 ft.) from the establishment;
- (b) A "section," whose boundary shall be at an area larger than the immediate neighborhood and whose boundary shall be at a distance of twelve hundred feet (1,200 ft.) from the establishment; and
- (c) A "portion," whose boundary shall be at an area larger than a "section" and whose boundary shall be at a distance of eighteen hundred feet (1,800 ft.) from the establishment.

1607.9 In determining the area to be considered, the Board shall consider the report of the Board's investigators concerning the overall characteristics of the alternative areas, including the following:

- (a) The population and density of the areas surrounding the establishment;
- (b) The general commercial and residential activities in the areas surrounding the establishment; and
- (c) Geographical factors, such as parks, rail lines, major thoroughfares, bodies of water, cemeteries, and unimproved or unused property, which may tend to define physically an area to be considered.

1607.10 In determining the area to be considered, the Board shall also consider the evidence and testimony of a party proposing a particular area of consideration, when the proposal is based on an assertion of:

- (a) Historical patterns of commercial or residential activity leading to an identification of a given area as a distinct, generally-recognized neighborhood, or larger area; or

(b) Any other reason not included in § 1607.3.

1607.11 The Board shall make a final decision on the boundaries without a hearing and based on the submissions received from the applicant and the objector. The Board's decision with regard to the selection of boundaries shall be final and may not be appealed to any Court in the District of Columbia, nor shall it be a proper subject for a petition for reconsideration filed with the Board.

1607.12 The Board's final decision shall be made and announced at the first status hearing for the application at issue.

#### **1608. SETTLEMENT CONFERENCES**

1608.1 Whenever a protest is filed, all parties shall attend a settlement conference among themselves on any mutually convenient date prior to the scheduled status or protest hearing. The date of the settlement conference may be arranged at the roll call hearing or may be arranged at any other time.

1608.2 The parties at a settlement conference may enter into a cooperative/voluntary agreement, as provided for in § 1609, and shall submit, on or before the date of the scheduled status or protest hearing, the agreement to the Board for approval.

1608.3 If the parties fail to reach a cooperative/voluntary agreement on one or more of the protest issues, they shall so state at the scheduled status or protest hearing and the Board shall thereupon proceed with a protest hearing as to all unresolved issues of fact.

#### **1609. COOPERATIVE OR VOLUNTARY AGREEMENTS**

1609.1 The terms of a cooperative/voluntary agreement submitted by the parties to the Board for approval shall be consistent with District of Columbia law and shall relate to either: (1) the operations of the ABC establishment; (2) the sale, service, and consumption of alcoholic beverages at the ABC establishment; or (3) a topic covered in Title 25 of the D.C. Official Code and/or this title.

1609.2 Cooperative/voluntary agreements reached between an entity with standing under D.C. Official Code § 25-601 and an applicant for a Caterer's license may address activities of the caterer generally within the boundaries of an ANC or activities at a specific event site.

1609.3 The Board may initiate a "Notice to Show Cause Hearing" upon evidence that the holder of a license has violated the material terms of the agreement. Upon a determination that the licensee has materially violated the agreement, the Board may suspend or revoke the license or impose any other penalty authorized by the Act or this title.

1609.4 Upon finding that a licensee has materially violated certain conditions required by the Board as authorized by this section, the Board may:

- (a) Upon the first violation, fine the licensee not less than one hundred dollars (\$100) and not more than five hundred dollars (\$500);
- (b) Upon the second violation for the same offense and any other offenses, fine the licensee not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000) and suspend the license for not more than seven (7) consecutive days;
- (c) Upon the third violation for the same offense and any additional offenses, fine the licensee not less than one thousand (\$1,000) and not more than two thousand dollars (\$2,000) and suspend the license for not more than fourteen (14) consecutive days; and
- (d) Upon the fourth (4th) violation for the same offense, the Board may revoke the license.

1609.5 Where the applicant or other signatories to a cooperative/voluntary agreement believe that circumstances outside the parties' control substantially change the cooperative/voluntary agreement, the applicant or the other signatories to a cooperative/voluntary agreement may petition the Board for an amendment to the cooperative/voluntary agreement. A request filed with the Board to amend a cooperative/voluntary agreement shall also be sent to the other signatories of the agreement.

1609.6 A request to amend a cooperative/voluntary agreement shall be considered by the Board pursuant to the substantial change and notice procedures set forth in D.C. Official Code §§ 25-404 and 25-762.

1609.7 Where a signatory to a cooperative/voluntary agreement opposes a request to amend the cooperative/voluntary agreement, the requesting party must provide the Board with good cause as to why the cooperative/voluntary agreement should be amended.

1609.8 A request by a party to amend a cooperative/voluntary agreement may be filed with the Board at any time. However, a request to amend a cooperative/voluntary agreement that is denied by the Board or withdrawn by a party shall not be reconsidered by the Board for a period of two years.

1609.9 The phrase "cooperative agreement" often used in agreements reached between applicants and protestants that are submitted to the Board for approval shall be considered synonymous with the phrase "voluntary agreement" and shall have the same meaning in these regulations.

## **1610. SUMMARY SUSPENSION AND SUMMARY REVOCATION HEARINGS**

1610.1 In rendering a decision on a summary suspension hearing, the Board may suspend or restrict the license of the licensee. Additionally, the Board may keep the licensee in the summary suspension proceeding to monitor the licensee to make a determination if the conditions placed by the Board on the licensee are effective. The Board shall schedule a show cause hearing to revoke the license if it determines that the operations of the licensee present an imminent danger to the health and safety of the public pursuant to D.C. Official Code §§ 25-826 and 25-827.

1610.2 In rendering a decision on a summary revocation hearing, the Board may revoke, suspend, or restrict an applicant's license. The Board shall only summarily revoke a license pursuant to D.C. Official Code § 25-826 if the licensee has had its license previously suspended by the Board for incidents of health and safety occurring within the last two years.

### **SUBCHAPTER III. NON-CONTESTED CASES**

#### **1611. FACT-FINDING HEARINGS**

1611.1 Prior to rendering a final decision on a licensing request or an ABRA Investigative Report, the Board may hold a fact-finding hearing to obtain further information from an applicant or licensee.

1611.2 A licensee shall not be fined, suspended, or revoked at a fact-finding hearing. However, information provided at a fact-finding hearing may result in the issuance of a show cause notice pursuant to § 1604 or other enforcement action permitted under the Act or this title.

#### **1612. MORATORIUM HEARINGS**

1612.1 The Board shall hold moratorium hearings pursuant to the requirements set forth in D.C. Official Code §§ 25-353 and 25-354.

### **CHAPTER 17. PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS**

#### **1700. APPLICABILITY**

1700.1 This chapter shall apply to all hearings held before the Board and, as appropriate, to the Referendum Petition process.

1700.2 The Board may, for good cause shown and in the interests of justice or to prevent hardship, waive any of the provisions of this chapter in any proceeding after duly advising the parties of its intention to do so.

#### **1701. PARTIES, INTERVENTION, AND RIGHT TO BE HEARD**

1701.1 The parties to a show cause hearing shall be the following:

- (a) The respondent, licensee, permittee, or applicant, and
- (b) The District of Columbia.

1701.2 The parties to a protest hearing shall be the applicant and the protestants and their designated representatives, if any.

1701.3 The parties to a fact-finding hearing shall be the licensee, permittee, or applicant for a license, and such other persons whose appearance the Board deems necessary and who are designated by the Board as parties.

1701.4 The Board may, in its discretion, permit interested persons other than parties, as defined in this chapter, to intervene in a proceeding for such general or limited purpose as the Board may specify.

1701.5 A person permitted to intervene under this section shall comply with all conditions fixed by the Board and shall not be considered a party to the proceedings.

1701.6 At any proceeding before the Board on an application for issuance or renewal of a license, or transfer of a license to a new person or location, the Board shall hear as witnesses all persons residing within and without the neighborhood who desire to be heard; provided that such testimony is not irrelevant or duly repetitious.

## **1702. COMPUTATION OF TIME**

1702.1 Whenever a party to a proceeding under this chapter has the right or is required to perform some act within a specified time period after the service of notice upon the party, and the notice is served upon that party by mail, three (3) days shall be added to the prescribed period.

1702.2 Except as otherwise provided by law, any time period prescribed by this chapter may, for good cause shown, be extended or shortened by the Board with notice to all parties.

## **1703. SERVICE OF PAPERS**

1703.1 Any papers filed with the Board in a contested case, or a Referendum Petition proceeding shall be served by personal delivery, first class U.S. mail, registered or certified mail, or facsimile. An original and six (6) copies of all papers filed with the Board are required, and proof of service shall be shown as required in § 1703.7.

1703.2 Any papers required to be served upon a party may be served upon the party or the party's designated representative.

1703.3 When a party has appeared through a representative, service shall be made upon the representative of record.

1703.4 Service upon a party may be made in the following manner:

- (a) By personal delivery;
- (b) By use of a process server;
- (c) By registered or certified mail;
- (d) By telegram; or
- (e) As otherwise authorized by law.

1703.5 Service upon a party shall be completed upon any of the following acts:

- (a) Handing the paper to the person to be served;
- (b) Leaving the paper at the licensed premises with a Board-approved manager;
- (c) Leaving the paper at the party's usual place of residence with some individual of suitable age and discretion residing therein;
- (d) Deposit of the paper in the U.S. Mail, by registered or certified mail, properly stamped and addressed;
- (e) Deposit of the paper with a telegraph company, properly addressed and with charges prepaid;
- (f) Deposit of the paper in the U.S. Mail, by first class mail, properly stamped and addressed, by an attorney of record; or
- (g) By an action in conformity with an Order of the Board in any proceeding.

1703.6 Proof of service shall state the name and address of the person served, the manner of service, and the date of service.

1703.7 Proof of service shall be shown by one of the following:

- (a) Written acknowledgement of the person served or that person's representative;
- (b) The certificate of the person making the service;

(c) A return receipt, if served by registered or certified mail; or

(d) A receipt, if served by telegram.

1703.8 Failure to serve all parties of record, or their designated representatives, may result in the Board delaying action on the matter at issue until such time as service is properly accomplished.

#### **1704. SUBPOENAS**

1704.1 The Board may upon its own motion, or upon the request of a party, compel witnesses to appear and testify or to produce books, records, papers, or other documents.

1704.2 Subpoenas shall be served by one of the methods set forth in D.C. Official Code § 25-443(a).

1704.3 Subpoenas issued by the Board shall be enforceable in the manner prescribed in D.C. Official Code § 25-443(c).

#### **1705. CONTINUANCES**

1705.1 A hearing scheduled before the Board shall not be delayed by motion for a continuance unless the motion is received in writing by the Board and the other parties six (6) calendar days before the scheduled hearing date and is served upon all parties on or before the sixth (6th) calendar day before the hearing. To be granted, the motion shall, in the opinion of the Board, set forth good and sufficient cause for the continuance.

1705.2 Conflicting engagements of counsel shall not be considered good and sufficient cause for continuance unless set forth in a motion filed promptly after notice of the hearing has been given.

1705.3 The granting of a continuance by the Board shall not be considered a waiver of requirements of this chapter, governing the time in which to file objections, petitions, or other pleadings.

1705.4 The Board may, on motion of any party or on its own motion, continue a hearing in order to permit an ANC to vote on a material issue in the hearing or upon a determination that the interests of justice will be served by the granting of the continuance to any party.

1705.5 The Board may, on the request of both the ANC and the applicant, extend the ANC's protest petition deadline for the sole purpose of allowing the ANC to vote on whether to support or protest the license application.

#### **1706. APPEARANCE AND REPRESENTATION**

1706.1 In any proceeding before the Board, an individual may appear on his or her own behalf.

1706.2 In any proceeding before the Board, a general partner of a partnership may represent the partnership, if properly authorized.

1706.3 In any proceeding before the Board, an officer of a corporation or association may represent the corporation or association, if authorized to do so by the Board of Directors of the corporation or association.

1706.4 A partner or officer appearing pursuant to § 1706.2 or 1706.3 may be required to establish his or her authority to act in that capacity;

1706.5 Any party appearing or having the right to appear before the Board in any proceeding shall have the right to representation by an attorney or designated representative of his or her choice. Any party appearing before the Board in any proceeding may also bring an interpreter of his or her choice.

1706.6 The provisions of § 1706.5 shall not infringe upon the authority of the Board under § 1706.7 to require representation of a party.

1706.7 If it appears to the Board that the facts or issues in a matter before it are so intricate or involved that, in the interests of justice, of conserving time, or of facilitating preparation of an adequate record, a party ought to be represented by an attorney, the Board may urge the party to obtain counsel and shall allow the party a reasonable time in which to do so, as long as the rights of other parties to the hearing are not substantially and adversely affected.

1706.8 Any person authorized to appear pursuant to this section may sign any paper required or permitted by statute, regulation, or this chapter to be filed with the Board.

#### **1707. NOTICE OF APPEARANCE**

1707.1 No person may appear before the Board in a representative capacity prior to submission of a signed statement containing that person's name, address, occupation, telephone number, and the nature of representation.

1707.2 The written statement required under § 1707.1 shall be made a part of the record of the proceeding.

1707.3 Any attorney appearing as counsel in any proceeding shall execute a notice of appearance containing his or her name, office address, office telephone number, D.C. Bar number, and the nature of representation.

1707.4 In the case of law students who appear before the Board under the direction of an



accredited law school clinical program, the supervising attorney shall register with the Board.

#### **1708. INSPECTION OF BOARD FILES**

1708.1 The records of the Board shall be available for inspection and copying during normal business hours without appointment at the request of any interested party or member of the public, except as otherwise provided in this section.

1708.2 The records of the Board that shall be available for inspection and copying include the following:

- (a) Written decisions and orders of the Board;
- (b) Regulatory inspection reports;
- (c) License applications and related documentation; and
- (d) Any other records not specifically excepted from disclosure by the Freedom of Information Act of 1976 (D.C. Official Code §§ 2-531 *et seq.* ).

1708.3 The Board shall withhold from its files those documents and other information which are exempted from public disclosure under the Freedom of Information Act of 1976. However, all documents and other information which is relied upon by the Board in reaching a decision on a contested case shall be made available to all parties and shall be entered into the record of the proceedings.

1708.4 Except as provided in § 1708.3, all petitions filed under this chapter shall be considered part of the record and shall be available for public inspection.

#### **1709. INVESTIGATOR REPORTS**

1709.1 The Board shall make investigator reports available to the parties of a contested case at least two days prior to the date of the protest hearing or catered site protest hearing.

#### **1710. SCHEDULING AND CONDUCT OF HEARINGS: GENERAL PROVISIONS**

1710.1 The Board shall not schedule any hearing until the applicant has submitted, in writing to the Board, all information and documents required by the Act and this title.

1710.2 Before a person may be heard to object to approval of an application, the person shall have notified the Board and the applicant or licensee, by any of the means listed in § 1703.4, of his or her intent to object, and of the grounds for the objection, prior to the end of the protest period.

1710.3 Decorum and good order shall be maintained at all times during hearings, and the Board may exclude or order the removal from the hearing room of any person who refuses to comply with a reasonable order of the Board.

1710.4 In all protest hearings before the Board, the applicant shall open and close the case insofar as presentation of evidence and argument are concerned. In all show cause proceedings, the District of Columbia shall open and close the case.

### **1711. EVIDENCE: GENERAL RULES**

1711.1 Any party objecting to the admission of evidence shall state the grounds relied upon for the objection.

1711.2 Formal exceptions to the rulings of the Board made during the course of a hearing shall not be required.

1711.3 The parties may, by stipulation in writing filed with the Board, or in the record at a hearing, agree upon any facts relevant to a proceeding, or upon the substance of the testimony which would be given by a witness.

1711.4 The Board, in its discretion, may require additional evidence on any matter covered by stipulation.

### **1712. OFFERS OF PROOF**

1712.1 Any offer of proof made in connection with an objection to any ruling of the Board which rejects or excludes proffered oral testimony shall consist of a statement for the record of the substance of the evidence which the party contends would be established by the testimony.

1712.2 If the excluded evidence is documentary, a copy of the written evidence shall be marked for identification and shall constitute the offer of proof.

1712.3 The document shall be retained by the Board as part of the record for purposes of an appeal.

### **1713. DOCUMENTARY EVIDENCE**

1713.1 Documentary evidence offered at any hearing before the Board shall, if received by the Board, be retained by the Board, and may be examined by interested persons pursuant to § 1708.

1713.2 Any party who offers documentary evidence shall, at the hearing, provide copies to each opposing party.

1713.3 The Board may, in its discretion, permit the withdrawal of original documents received

into evidence and the substitution of certified copies in lieu of the originals.

1713.4 When relevant and material matters offered into evidence are contained in a book or other document which also contains other matters not material or relevant, the person offering the evidence shall plainly designate the matters offered, and the immaterial and irrelevant parts shall be excluded and segregated insofar as practicable.

#### **1714. EXAMINATION OF WITNESSES**

1714.1 In any proceeding before the Board, each party shall have the right to present in person, by counsel or by designated representative, the party's case or defense, including oral and documentary evidence, to submit rebuttal evidence, and to cross-examine opposing witnesses, unless the matter at issue has been dismissed by the Board.

1714.2 Any member of the Board may question any witness at any time during or after examination or cross-examination, subject to objection by a party.

1714.3 Any oral or documentary evidence may be received, but the Board shall exclude irrelevant, immaterial, or unduly repetitious evidence.

1714.4 The Board may impose a time limitation on oral arguments and witness testimony as it deems appropriate.

1714.5 The Board shall afford all parties the opportunity to present oral argument.

#### **1715. RECORDS IN PROCEEDINGS**

1715.1 When any part of the record in any other proceeding before the Board, a criminal or civil action, or a proceeding before any administrative agency is offered in evidence, a certified true copy of that part of that record shall be presented to the Board as an exhibit, except in the following instances:

(a) It is described in a manner which makes it readily identifiable and the offeror agrees to supply copies at a later time as required by the Board;

(b) There is a stipulation on the record that it may be incorporated by reference and the Board directs the incorporation; or

(c) It is described in a manner which makes it readily identifiable in the files of the Board.

#### **1716. MOTIONS**

1716.1 Unless otherwise specified, motions shall conform to the following requirements:

- (a) Motions shall be typewritten on letter-sized (8.5" x 11") paper and double-spaced;
- (b) An original and six (6) legible copies shall be filed with the Board; and
- (c) A copy shall be served on all other parties and shall include a certificate of service.

1716.2 Any party may file a response in opposition to a motion within seven (7) calendar days after service of the motion. In the case of motions for continuances which have been filed by a party on the sixth (6th) calendar day before a scheduled hearing, pursuant to § 1705.1, responses thereto shall either be made in writing and served by personal delivery on all parties prior to the hearing or shall be made orally on the date of the hearing.

1716.3 A response to a motion shall not include a motion for other affirmative relief against the moving party.

1716.4 If a party filing an opposition desires to submit a motion for other affirmative relief, it shall be done by separate pleading.

1716.5 Any motion seeking relief from the Board shall be accompanied by a proposed Order of the Board.

1716.6 A reply may be filed within three (3) calendar days after service of a response in opposition to a motion, but the reply shall not re-argue propositions presented in the motion, nor present matters which are not strictly in reply to the opposition.

1716.7 No further pleading shall be filed except by leave of the Board.

## **1717. POST-HEARING SUBMISSIONS**

1717.1 No document or other information shall be accepted for the record after the close of a hearing, except as follows:

- (a) Until all parties are afforded due notice and an opportunity to rebut the information; or
- (b) Upon official notice of a material fact not appearing in the evidence in the record, in accordance with D.C. Official Code § 2-509(b).

1717.2 The Board shall afford parties an opportunity to file Proposed Findings of Fact and Conclusions of Law within thirty (30) calendar days after the conclusion of the hearing. The parties may seek an extension to file Proposed Findings of Fact and Conclusions of Law if the

transcript has not become available within twenty (20) calendar days. An extension granted by the Board shall not exceed twenty (20) calendar days after the transcript in the proceeding becomes available, by oral or written notice of the Board to each party.

1717.3 Proposed Findings of Fact and Conclusions of Law shall be typewritten on letter-sized (8.5" x 11") paper and double-spaced.

1717.4 An original and six (6) legible copies of Proposed Findings of Fact and Conclusions of Law shall be filed with the Board.

1717.5 A copy of the Proposed Findings of Fact and Conclusions of Law shall be served on each party.

### **1718. DECISIONS OF THE BOARD**

1718.1 Within ninety (90) calendar days after the close of the record, the Board shall render its written decision accompanied by Findings of Fact and Conclusions of Law.

1718.2 Findings of Fact and Conclusions of Law shall consist of a concise statement of the Board's conclusions on each contested issue of fact, and shall be based solely upon evidence contained in the record and facts of which the Board properly took judicial notice.

1718.3 Findings of Fact and Conclusions of Law shall be supported by and in accordance with reliable, probative, and substantial evidence.

1718.4 In cases where a hearing for an original application or the transfer of an existing license to a new location is sought, the Findings of Fact and Conclusions of Law shall include, but not be limited, to the following:

- (a) The boundaries of the neighborhood;
- (b) The appropriateness of the location for which the license is sought, in accordance with D.C. Official Code §§ 25-313 and 25-314, and § 400 of this title; and
- (c) A finding as to the wishes of the persons voting, owning property or residing in the vicinity.

1718.5 All written decisions of the Board shall be available for public inspection and copying at a reasonable cost.

### **1719. RECONSIDERATION, REHEARING, AND REARGUMENT**

1719.1 Petitions for reconsideration, rehearing, reargument, or stay of a decision or order of the Board filed pursuant to D.C. Official Code § 25-433(d) shall be typewritten on letter-sized (8.5"

x 11") paper and double-spaced.

1719.2 An original and six (6) legible copies of the Petition shall be filed with the Board, and a copy shall be served on each party and intervenor.

1719.3 A petition for reconsideration shall state briefly the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought.

1719.4 If a petition is based in whole or in part on a new matter, that matter shall be set forth in an affidavit and be accompanied by a statement that the petitioner could not by due diligence have known or discovered the new matter prior to the date the case was presented to the Board for decision.

1719.5 The Board may, in its discretion, permit or require oral argument upon a petition filed under this section.

## **1720. EX PARTE COMMUNICATIONS**

1720.1 If a proceeding is a contested case within the meaning of the D.C. Administrative Procedure Act (D.C. Official Code § 2-502(8)), the following restrictions shall apply:

(a) A person shall not make or knowingly cause to be made to a member of the Board an ex parte communication relevant to the merits of the proceeding; and

(b) No member of the Board shall make or cause to be made to any interested persons outside the Board an ex parte communication relevant to the merits of the proceeding.

1720.2 The prohibitions set forth in § 1720.1 shall apply upon the issuance of notice of an application for an original, transfer, or renewal license or a notice to show cause hearing.

1720.3 "Ex parte communication" does not include a request for a status report on a matter, proceeding, or notice of a meeting or hearing.

## **1721. TRANSCRIPTS OF HEARINGS**

1721.1 Hearings shall be recorded and transcribed under the direction of the Board.

1721.2 Whenever a proceeding is transcribed, the Board shall notify all parties (or their representatives) by telephone that the transcript is available for purchase directly from the transcription company.

1721.3 Changes in the official transcript may be made only in cases of material error.

1721.4 A motion to correct the transcript shall be filed with the Board within ten (10) calendar

days of the date the transcript is available to the movant. Copies of the motion shall be served on all parties.

1721.5 If no objections to the motion are filed within five (5) days after service of the motion, the Board may correct the transcript.

1721.6 The Board shall have final authority to dispose of all motions for correction of the record.

## **CHAPTER 18. PETITION PROCEDURES**

### **1800. TYPES OF PETITIONS**

1800.1 There shall be two (2) types of petitions which may be received by the Board regarding objections to licenses, as follows:

- (a) Protest Petitions filed pursuant to D.C. Official Code § 25-601; and
- (b) Referendum Petitions filed pursuant to D.C. Official Code § 25-604.

1800.2(a) For purposes of this section, "Protest Petitions" are those which may be signed by any person in support of, or in opposition to a license application for the following:

- (1) The issuance of a new license;
- (2) The renewal of an existing license;
- (3) The transfer of a license to a new location;
- (4) Substantial changes to the nature of the operations of a licensed establishment; or
- (5) A change in license class.

1800.2(b) Protest Petitions may be filed to indicate whether the signatories believe, or do not believe, that the establishment is appropriate under the provisions of D.C. Official Code §§ 25-313 and 25-314, and § 400 of this title.

1800.3(a) Referendum Petitions are those which may be signed only by registered voters who live within a six hundred foot (600 ft.) radius of an establishment seeking licensure that will not provide nude dancing or within a twelve hundred foot (1200 ft.) radius of a Retailer's License Class CN establishment that seeks to provide nude dancing at a new location. These Petitions may be filed only to indicate opposition to the following:

- (1) An application for a new license;
- (2) A change of license class (except as provided by this title);
- (3) A transfer of a license that does not permit nude dancing from a place outside of the six hundred foot (600 ft.) radius, to a place within the six hundred foot (600 ft.) radius; or
- (4) A transfer of a Class CN license that permits nude dancing from a place outside of the twelve hundred foot (1200 ft.) radius, to a place within the twelve hundred foot (1200 ft.) radius.

1800.3(b) Referendum Petitions may be filed for the purpose of requiring the Board to deny any one of the four (4) licensing actions listed in § 1800.3(a), on the grounds that a majority of the petitioners have found that the establishment is not appropriate, under the provisions of D.C. Official Code §§ 25-313 and 25-314, and § 400 of this title.

1800.4 The filing of both a Protest Petition and a Referendum Petition by separate petitioners shall be considered simultaneously by the Board. However, the Board shall not render a decision on the filed Protest Petition until the Referendum Petition has been completed.

#### **1801. PETITION SIGNATURE REQUIREMENTS**

1801.1 No person holding a license issued under the Act shall be eligible to object, nor may be counted, as a petitioner for the purpose of Referendum Petitions.

1801.2 A person filing a Referendum Petition shall not be eligible to file a Protest Petition.

1801.3 Each person signing a Protest Petition shall both sign and print his or her name on the petition in a legible manner.

1801.4 Each person signing a Referendum Petition shall sign opposite his or her name, as printed on a voter list, and the signature shall be entered legibly and in the same manner as it appears on the person's voter registration card.

#### **1802. PROTEST PETITIONS**

1802.1 Petitions in support of or in opposition to a license application for the issuance of a new license, the renewal of an existing license, the transfer of a license to a new location, substantial changes to the nature of the operations of a licensed establishment, or a change in license class shall be filed with the Board by the final day of the protest period for the license application.

1802.2 Petitions filed under § 1802.1 shall set forth the following information:



- (a) The name of the applicant or licensee;
- (b) The address for which the license is sought;
- (c) The class of license requested;
- (d) The application number or license number, as appropriate;
- (e) A brief summary of the reasons for support of or opposition to the granting of the license; provided, that participation in Board proceedings shall not be limited by this summary; and
- (f) The printed name and address of each petitioner, accompanied by his or her handwritten signature.

1802.3 Forms for the filing of Protest Petitions shall be available from ABRA.

1802.4 Petitions filed pursuant to this section shall not be withdrawn after the date of the protest hearing.

1802.5 Protest Petitions which are received by the Board after the fifteen (15) calendar day period specified in § 1802.1 shall not be considered by the Board in reaching a decision on any matter and shall be promptly returned to the party or individual submitting the petitions.

1802.6 The Board shall permit any party to a protested case to challenge the validity of signatures on Protest Petitions submitted by the opposing party, according to the procedures set out in § 1805 of this chapter.

### **1803. REFERENDUM PETITIONS**

1803.1 Objections may be submitted as written petitions of registered voters in the form prescribed in § 1805 of this chapter.

1803.2 Only registered voters within the meaning of D.C. Official Code § 1-1001.07, may sign Referendum Petitions. However, if the registered voter is also the holder of a license issued under the Act or owns twenty-five percent (25%) or more of stock or partnership interest in a licensed establishment, he or she shall not be eligible to sign Referendum Petitions. Eligible registered voters who initiate Referendum Petitions pursuant to D.C. Official Code § 25-601 shall provide written documentation of their eligibility to vote to the Board at the Roll Call hearing.

1803.3 The area within either a six hundred foot (600 ft.) radius or a twelve hundred foot (1200 ft.) radius, to be established in determining the eligibility of registered voters, shall be that as set forth in D.C. Official Code § 25-312(c).

1803.4 When property within the established area is owned by the District of Columbia or by the United States, the Mayor or the designated custodian of the property, as appropriate, may object on behalf of the District of Columbia or of the United States.

1803.5 The initiation of the Referendum Petition process under this section must be undertaken by an eligible objector as set forth in D.C. Official Code § 25-601.

1803.6 Any eligible objector may initiate the Referendum Petition process by delivering to the Board in person a petition proposal, which shall contain the following:

- (a) A request that the Board order that the appropriate petitions be printed;
- (b) A proposed statement of no more than one hundred (100) words identifying the basis for the objection;
- (c) A clear reference, as a summary of the grounds of objection, to one or more of the conditions listed at D.C. Official Code §§ 25-313 and 25-314; and
- (d) The name, address, and phone number of the initiating petitioner.

1803.7 Upon delivery of the petition proposal, the staff of the Board shall meet with the petitioner and shall immediately determine whether the proposal relates to a licensee who is applying to change its class of license. If the petition does involve a change in license class, the petition process shall be held in abeyance until the Board makes a final determination as to whether the petition proposal must be denied. If the petition proposal does not involve a change in license class, the petition process shall go forward, as set out in this section.

1803.8 Within two (2) calendar days of the determination that the petition process may go forward, the initiating petitioner shall submit a copy of the proposal for vote to the ANC in whose jurisdiction the applicant's establishment is located, and shall submit to the Board a certificate of service, attesting to delivery to the ANC.

1803.9 The Board shall not be required to consider the position taken by the ANC unless the ANC has voted on the merits of the objection within forty-five (45) calendar days from the date on which the proposal is submitted, and has communicated the results of the vote to the Board in writing, within ten (10) calendar days after the expiration of the forty-five (45) calendar day period. The ANC vote shall be taken at a scheduled ANC meeting, of which public notice has been given, and where a quorum of ANC Commissioners were present and voting.

1803.10 Within ten (10) business days from the date of receiving an eligible objector's proposed statement pursuant to § 1803.6(b), the Board shall make a preliminary determination of whether the proposed statement is nondiscriminatory in effect or intent and whether it otherwise complies with the applicable requirements.

1803.11 The Board may revise the proposed statement, subject to the consent of the initiating petitioner, or it may request that the petitioner submit a revised statement.

1803.12 The Board shall make a new, and final, determination concerning the sufficiency of the revised proposal. If the statement is revised, the revised statement shall be sent by the Board to the ANC, and a new forty-five (45) calendar day period shall be allowed for the ANC to vote on the proposal at its regular meeting, and a further ten (10) calendar day period thereafter shall be allowed for the ANC to submit the results of its vote in writing to the Board.

1803.13 After the petition proposal has been found sufficient by the Board and after the ANC review period set out in § 1803.9, the Board shall order that the statement and the result of the ANC vote, if any, be printed on petition forms to be circulated to eligible objectors. The Board shall not be required to include the results of the ANC vote if the ANC has not communicated the results of the vote to the Board within ten (10) days after the expiration of the review period.

1803.14 Within thirty (30) calendar days from the date that the petition forms have been ordered to be printed, the Board shall do the following:

- (a) Notify the applicant and provide it with a copy of the approved statement;
- (b) Provide the applicant and the initiating petitioner with a map and written description of the boundaries of the area within the six hundred foot (600 ft.) or twelve hundred foot (1200 ft.) radius;
- (c) Provide the applicant and the initiating petitioner with a list of the names and addresses of the relevant registered voters; and
- (d) Notify each relevant registered voter by first class mail of the petition process.

1803.15 The notice to the registered voters shall include the following:

- (a) The name of the applicant;
- (b) The street address of the establishment;
- (c) The class of license sought;
- (d) The type of establishment and nature of the operations proposed;
- (e) The name and address of the initiating petitioner;
- (f) The content of the petition statement approved by the Board; and

(g) A description of the area established under § 1607 of this title.

1803.16 Petitions circulated thereafter shall not be considered by the Board unless they are returned to the Board no later than the thirtieth (30th) calendar day subsequent to the end of the period of three (3) business days during which the petitions were made available by the Board.

#### **1804. SOLICITATION OF SIGNATURES FOR PETITIONS**

1804.1 Any person soliciting signatures for a Referendum Petition filed under this chapter shall be a resident of the District of Columbia and at least 18 years of age. A person soliciting signatures for any petition filed under this chapter may be paid; however, nothing of value may be offered or given to any person for any signature.

1804.2 If any person has solicited signatures for any petition filed under this chapter, that person shall disclose his or her identity to the Board and shall file, at the same time that petitions are submitted to the Board, a written affidavit stating the following:

- (a) That he or she has been employed or has volunteered to obtain signatures for the petitions;
- (b) If employed by another, the identity of the employer;
- (c) For Referendum Petitions, that he or she is a resident of the District of Columbia and at least 18 years of age;
- (d) That the signatures and addresses appearing on the petition are believed by the circulator to be genuine signatures and correct addresses of the persons claiming to own or reside on the property or registered to vote at the address; and
- (e) That the signatures were voluntarily given and that nothing of value was offered or given for any signature.

#### **1805. CHALLENGES TO PETITIONS**

1805.1 The Board shall fix and announce a period of fifteen (15) calendar days, subsequent to the filing of completed petitions, during which the validity of the signatures on the petitions may be challenged by any party, as set forth in this section.

1805.2 To challenge the validity of a petition signature, the applicant or the person circulating the petition in the matter at issue shall submit a written and signed affidavit to the Board, specifying concisely any alleged defect in the petition signature.

1805.3 Within three (3) business days, the Board shall serve a copy of the affidavit submitted pursuant to § 1805.2 to the applicant or to the person who circulated the petition, as applicable.

1805.4 The Board shall receive evidence in support of and in opposition to the challenge and shall within fifteen (15) calendar days from the end of the challenge period, determine whether the challenged petition signatures are valid.

#### **1806. DENIAL OF LICENSE BASED ON REFERENDUM PETITIONS**

1806.1 A majority of the registered voters shall consist of fifty percent (50%) plus one of the eligible registered voters.

1806.2 When the approved signatures on the petitions demonstrate that a majority of the registered voters object to the granting of the license sought, the Board shall deny the license.

1806.3 When the approved signatures on the petitions do not demonstrate that a majority of the registered voters object to the granting of the license sought, the Board shall render a decision on any filed Referendum Petition. If no recognized protests have been filed pursuant to Chapter 6 of Title 25 of the D.C. Official Code, the Board shall approve the license application.

1806.4 In determining the number of eligible registered voters, the Board may reduce or increase the number of eligible voters listed on the voter list provided by the Board of Elections and Ethics based on the death or change of residence of a voter on the list as provided in subsection 1806.5.

1806.5 Individuals with standing to file a Referendum Petition pursuant to D.C. Official Code § 25-601 or the applicant may file with the Board prior to the submission date for the Referendum Petitions a written request to reduce or increase the eligible voter list that contains the documentation required by subsection 1806.6. The Board may accept, modify, or reject the written request. Any written request filed with the Board shall be served on the applicant and may be challenged by the applicant pursuant to section 1805.

1806.6 A written request filed pursuant to subsection 1806.5 that asserts that an eligible registered voter died prior to the filing of the license application at issue must be documented by submitting to the Board either a death certificate or an obituary from a recognized newspaper. A written request filed pursuant to subsection 1806.5 that asserts that an eligible registered voter has moved prior to the filing of the license application must be documented by submitting to the Board a signed affidavit showing that either the owner of the property or new tenant of the property in question stated to the solicitor of the signature for that property that the eligible registered voter moved prior to the filing of the license application. An individual may be added to the eligible registered voter list through a showing that the individual was eligible to sign or not sign the Referendum Petition as of the date that the application was filed.

#### **CHAPTER 19. COMPLAINTS: INQUIRIES TO THE BOARD**

**1900. COMPLAINTS**

1900.1 The Board shall receive, at any time during the license period, complaints from any person alleging a violation by a licensee of the Act or this title. Complaints shall be in writing and set forth enough information to allow the Board or its staff to investigate the matter.

1900.2 Any written complaint shall be kept confidential by the Board to the extent permitted by law, unless the writer specifically states that it may be made public.

1900.3 All written complaints which identify the complainant by name and address shall be responded to in writing by the Board or its staff within ninety (90) days of receipt of the complaint, and shall advise the complainant of what action the Board or its staff has taken on the matter.

1900.4 If the complainant has not provided the Board with a telephone number where he or she may be reached for additional information, and the written complaint has set forth insufficient information for the Board to take action, the Board or staff response shall so state.

1900.5 In addition to written complaints identifying the complainant, any person may make an anonymous complaint in writing to the Board, or orally to any Investigator at ABRA. Anonymous complaints shall be investigated to the best of the Board's ability, but may result in no action being taken if the anonymous complainant fails to provide the Board or the Investigator with adequate information.

**1901. LETTERS OF INFORMATION**

1901.1 Any person, group, licensee, or business organization may make a written request to the Board for general information concerning staff procedures, Board procedures, the Act, this title, or any other matter of a general nature affecting the licensing of alcoholic beverages in the District of Columbia.

1901.2 The Board shall respond to all such letters in writing, and may refer the writer directly to a member of the ABRA Staff, to a specific section of the Act or this title, or to other District of Columbia government officials. The response may also suggest that the writer retain the services of an attorney to properly advise him or her as to how to proceed in a particular matter. If the writer's inquiry is so broad, inexact, or vague that the Board is unable to respond, the Board shall so advise the writer and may request that the writer provide additional information.

1901.3 Any statement contained in the Board's letters of information provides only general guidance to the writer and shall not be binding on the writer or binding on the Board if the Board is later presented with a more particularized factual situation. Further, the Board's responses shall not provide any basis for appeal to any court in the District of Columbia.

**1902. ADVISORY OPINIONS**

1902.1 Any person, group, licensee or business organization may make a written request to the Board for an advisory opinion when:

- (a) The requestor is confronted with a situation involving the Act or this title which requires, or may require, him or her to take action; and
- (b) The legality or propriety of the action to be taken is not clear from the plain text of the Act or this title.

1902.2 Any request for an advisory opinion shall set forth sufficient information to allow the Board to understand the issues involved and to frame a response. The requestor shall also state which section of the Act or section of this title the requestor wishes the Board to interpret or clarify, with respect to the stated set of facts.

1902.3 If the writer presents insufficient facts in any request for an advisory opinion, the Board may, in its discretion, issue a letter of information; engage in fact-finding through investigation or in a noncontested case hearing; request the writer to provide by letter more facts or details in support of his or her request; or decline to issue an advisory opinion.

1902.4 The decision to issue an advisory opinion shall be solely in the discretion of the Board, and any decision by the Board not to issue such an opinion, shall not be subject to review by the Mayor or any court in the District of Columbia.

1902.5 If issued, an advisory opinion is not binding upon the requestor but shall constitute guidance to the requestor as to how the Board may interpret the Act or this title on a particular matter, the facts of which are consistent with those raised by the requestor. Where the requestor is also a licensee, the Board may issue a show cause notice pursuant to § 1604 of this title in the instance where the facts raised by the requestor provide the Board with reasonable cause to believe that the requestor's license should be fined, suspended, or revoked.

1902.6 If the requestor disagrees with the Board's advisory opinion in any respect, he or she may, within twenty (20) calendar days after issuance of the opinion, petition the Board in writing to reconsider its opinion, setting forth in detail the reasons and legal argument which support the requestor's points of disagreement, or may request the Board to issue a declaratory order, pursuant to § 1903. Advisory opinions of the Board may not form the basis of an appeal to any court in the District of Columbia.

1902.7 All advisory opinions of the Board determined to be in the public interest in accordance with D.C. Official Code § 2-508, shall be published in the D.C. Register and shall be available for public inspection and copying at a reasonable charge at the offices of the Board.

**1903. DECLARATORY ORDERS**

1903.1 Any licensee or applicant for a license may make a written request to the Board to issue a declaratory order, as provided in D.C. Official Code § 2-508, regarding the applicability of the Act, this title, or any other statute enforceable by the Board, to terminate a controversy other than a contested case or to remove uncertainty regarding a specific factual situation.

1903.2 The decision to issue a declaratory order shall be solely in the discretion of the Board, and any decision by the Board not to issue such an order shall not be subject to review by the Mayor or any court in the District of Columbia.

1903.3 Any request for a declaratory order shall:

(a) Set forth a particular and specific set of facts; and

(b) State in detail the reasons for uncertainty as to the applicability of the Act, this title or other statutes enforceable by the Board or state in detail why a controversy exists.

1903.4 All facts asserted in a request for a declaratory order shall be supported by sworn affidavit of the requestor. If the Board determines that further facts are necessary, it shall request the writer to provide those facts by written affidavit or may receive those facts by stipulation at a non-contested case fact-finding hearing.

1903.5 Any declaratory order issued by the Board shall state the Board's Findings of Fact and Conclusions of Law. If the circumstances so warrant, the declaratory order may include an order by the Board to the requestor to cease and desist any practice or activity which is violative of applicable statutes or this title.

1903.6 Any declaratory order issued by the Board shall be binding on the requestor as regards the state of facts established pursuant to § 1903.4. If the requestor is a licensee, failure to adhere to the decision of the Board, as set out in the declaratory order, shall subject the requestor to the issuance of a notice to show cause why his or her license should not be fined, suspended, or revoked, pursuant to D.C. Official Code § 25-821. If the requestor is an applicant for a license and fails to adhere to the decision of the Board, the Board shall take such steps as are necessary and authorized by law to enforce the provisions of its declaratory order.

1903.7 Any requestor who is aggrieved by a declaratory order or who disagrees with the declaratory order in any respect may appeal the order by:

(a) Petitioning the Board, in writing, within twenty (20) calendar days after issuance of the declaratory order, to reconsider its order, and by setting forth in detail newly discovered facts or by setting forth legal argument which shows one (1) or more errors of law in the Board's order; or



(b) Seeking judicial review of the Board's order as permitted under D.C. Official Code § 2-510.

1903.8 All declaratory orders of the Board determined to be in the public interest in accordance with D.C. Official Code § 2-508, shall be published in the D.C. Register and shall be available for public inspection and copying at a reasonable charge at the offices of the Board.

## **CHAPTER 20. CATERING LICENSE**

### **2000. CATERER'S LICENSE**

2000.1 A Caterer's license, issued under authority of D.C. Official Code § 25-113(i), shall authorize the licensee to sell, deliver, and serve alcoholic beverages for consumption on the premises of a catered event at which the licensee is also serving prepared food. It is understood that a Caterer is a business entity engaged principally in the processing, preparation, and service of food products which it has prepared especially for the customer for an event, and that the service of alcoholic beverages is incidental to the food preparation and service. A Caterer's license shall not be granted to or maintained by entities which only serve snack items. Snack items shall include but not be limited to "potato chips, popcorn, pretzels, nuts, cookies, and candy." A violation of this subsection shall be grounds for the Board to order the licensee to show cause why the license should not be suspended or revoked, and/or a civil fine imposed based upon the primary tier schedule set forth in D.C. Official Code § 25-830(c).

2000.2 The holder of a Caterer's license or its designated ABC manager shall remain on the premises of a catered event for the period during which alcoholic beverages are either sold, served, or consumed.

2000.3 Wholesalers and holders of an off-premises Retailer's license, Class A, may sell alcoholic beverages to caterers licensed under this section for catered events of one hundred (100) persons or less. Only holders of an off-premises Retailer's license Class A, may sell alcoholic beverages to caterers licensed under this section for catered events in excess of one hundred (100) persons.

### **2001. CATERER'S APPLICATION**

2001.1 Application for a Caterer's license shall be made on a form prescribed by the Board that shall include, at a minimum, the name, address, and federal and D.C tax identification numbers of the catering business, the date of application, and a notarized statement that the applicant for the Caterer's license is informed of and agrees to abide by Title 25 of the D.C. Official Code and this title. Caterers without a place of business within the District of Columbia shall also designate a registered agent upon whom service of process may be served. The Board may require documentation evidencing the applicant's qualification to transact business in the District of Columbia.

2001.2 The Board may issue a Caterer's license to an applicant who meets the criteria set forth in D.C. Official Code §§ 25-301 and 25-303(a)(2). An applicant for a Caterer's license shall not be subject to the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314 and § 400 of this title to qualify for the issuance or renewal of a Caterer's license. However, the holder of a Caterer's license shall be subject to the appropriateness standards set forth in D.C. Official Code § 25-313 for purposes of the catered site protest hearing set forth in § 2008 of this title.

2001.3 The holder of a Caterer's license shall be eligible to sell, deliver, and serve alcoholic beverages for consumption on premises designated by its customers in the District of Columbia.

2001.4 The holder of an on-premises Retailer's license Class C or Class D shall be required to file a separate application for the issuance or renewal of a Caterer's license.

2001.5 The Board in its discretion may grant Temporary licenses to a caterer pending approval of its catering license application.

## **2002. PURCHASE OF ALCOHOLIC BEVERAGES**

2002.1 A Caterer licensed under § 2000.1 shall not purchase alcoholic beverages from a Wholesaler other than for scheduled events to be attended by one hundred (100) persons or less. Upon purchasing alcoholic beverages for an event of one hundred (100) persons or less from a Wholesaler, a Caterer shall immediately provide the following information to the Wholesaler on a form prescribed by ABRA:

- (a) A description of the alcoholic beverages being purchased; and
- (b) A description of the scheduled event for which the alcoholic beverages are being purchased.

2002.2 Caterers shall maintain distinct records identifying the alcoholic beverages purchased from Wholesalers for each scheduled event of one hundred (100) persons or less and shall make such records available for inspection, upon request, by the Board and by the Wholesaler from which the alcoholic beverages were purchased. A Caterer licensed under § 2000.1 shall, concurrent with the information required in § 2006, provide to the Board a sworn affidavit on a form prepared by ABRA attesting that in the preceding reporting period it has used alcoholic beverages purchased from Wholesalers only for events of one hundred (100) persons or less. Upon request of the Board, the Caterer shall identify the Wholesaler(s) from whom alcoholic beverages have been purchased. The submission of a knowingly false or misleading affidavit shall be grounds for the Board to order the licensee to show cause why the license should not be suspended or revoked, and/or a civil fine imposed based upon the primary tier schedule set forth in D.C. Official Code § 25-830(c) and Chapter 8 of this title.

**2003. STORAGE OF ALCOHOLIC BEVERAGES**

2003.1 The holder of a Caterer's license may be permitted to store alcoholic beverages in the District of Columbia upon the approval of the Board. The holder of a Caterer's license shall not store alcoholic beverages intended for use in the District of Columbia outside of the District of Columbia.

**2004. IMPORTATION AND TRANSPORTATION OF ALCOHOLIC BEVERAGES**

2004.1 The holder of a Caterer's license shall be authorized to transport alcoholic beverages within the District of Columbia subject to the requirements of § 1303 of this title. The importation of alcoholic beverages by the holder of a Caterer's license into the District of Columbia from outside of the District of Columbia shall be prohibited pursuant to D.C. Official Code § 25-772, and said alcoholic beverages shall be deemed illegal contraband goods subject to seizure and forfeiture to the District of Columbia pursuant to D.C. Official Code § 25-911.

2004.2 The holder of a Caterer's license shall be permitted to remove sealed containers of alcoholic beverages from an event site but shall not be permitted to remove unsealed containers from the premises. Customers who purchase or receive alcoholic beverages at the event site shall be permitted to remove sealed containers of alcoholic beverages from the premises and retain possession of unsealed containers on the premises.

2004.3 Unopened containers of alcoholic beverages purchased from an on-premises Retailer, Class A, may be returned by the holder of a Caterer's license either to a Class A Retailer or stored at a location within the District of Columbia that has been approved by the Board.

**2005. ABC MANAGER ATTENDANCE AT CATERED EVENTS**

2005.1 Either the holder of a Caterer's license or a designated ABC manager shall remain on the premises during the hours that alcoholic beverages are sold, served, or consumed at the event.

2005.2 The holder or holders of a Caterer's license shall place a copy of the license in the possession of a designated ABC manager for the duration of the catered event and said manager shall make the license available for public inspection upon request.

**2006. CATERERS' REPORTS**

2006.1(a) Licensees subject to this section shall, semiannually, furnish to the Board on a form to be prescribed by the Board a report under oath that includes the following information:

- (1) The quantity of alcoholic beverages sold by the licensee in gallons during the preceding six months for beverage purposes;
- (2) The total dollar amount of receipts for the sale of alcoholic beverages and food;

- (3) Of the total in (2) above, the dollar amount received for the sale of alcoholic beverages and the dollar amount received for the sale of food, and the percentages of the total receipts represented by the respective amounts;
- (4) The dollar amount expended for alcoholic beverages and the amount expended for food, and the percentages of the total expenditures represented by the respective amounts;
- (5) The method used to compute the dollar amounts and percentages; and
- (6) An affidavit executed by an individual licensee, partner of an applicant partnership, or the appropriate officer of an applicant corporation, attesting to the truth of the statement. The submission of a knowingly false or misleading affidavit shall be grounds for the Board to order the licensee to show cause why the license should not be suspended or revoked, and/or a civil fine imposed based upon the primary tier schedule set forth in D.C. Official Code § 25-830(c).

2006.1(b) Licensees subject to this section shall, semiannually furnish to the Board on a form prescribed by the Board a summary report of the alcoholic beverage purchases it has made from Wholesalers for events for one hundred (100) persons or less.

2006.2 In computing the amounts received and expended for alcoholic beverages and for food, a licensee shall exclude all amounts received for taxes and gratuities in conjunction with these transactions, and all amounts, including surcharges, related to the obtaining and providing of entertainment or other goods and services at the licensed establishment.

2006.3 Failure to timely submit the reports listed in § 2006.1 to the Board shall constitute grounds for the Board to fine the licensee or suspend the license. Violation of this subsection shall be deemed a secondary tier violation subject to the penalties set forth in D.C. Official Code § 25-830(d) and Chapter 8 of this title.

## **2007. NOTICE TO THE PUBLIC**

2007.1 A list of licensed caterers shall be sent by the Board at the beginning of both the renewal and the second year payment period for Caterers' licenses to the following groups:

- (1) The Council;
- (2) The Board of Education; and
- (3) The Advisory Neighborhood Commissions

2007.2 The list of licensed caterers shall contain the legal name and trade name of the licensee and the licensee's address of record.

2007.3 The list shall be sent to the ANC by first-class mail and addressed to the following persons:

- (1) The ANC office, with a copy for each ANC member;
- (2) The ANC chairperson, at his or her home address of record; and
- (3) Each ANC member at his or her home address of record.

2007.4 The list of licensed caterer's shall also be published by the Board in the District of Columbia Register.

2007.5 A list of Caterers licensed to sell alcoholic beverages shall be made available to the public by ABRA upon request.

## **2008. CATERED SITE PROTEST HEARING**

2008.1 Protestants with standing pursuant to D.C. Official Code § 25-601 may file a written request for a catered site protest hearing with the Board to prohibit or place restrictions on the number, nature, and size of events held at an event site at which the service of alcoholic beverages by caterers is permitted.

2008.2 All written requests for a catered site protest hearing shall initially be scheduled by the Board for a preliminary hearing. All parties named in the written request for a catered site protest hearing shall be afforded notice of both the preliminary hearing and the catered site protest hearing. Upon notice of the protest request filed with the Board, the owner of the event site or its designated representative shall provide at the preliminary hearing a list of caterers who have previously provided catering services at the event site within the previous two years and any additional caterers currently scheduled at the event site.

2008.3 The written protest request shall be filed within thirty (30) days of the last problem event and shall address only those events which occurred in a period not before the preceding year. The request shall identify the site and the date(s) of the event(s) which give rise to the protest and the reason for protesting, based upon the appropriateness standards set forth in D.C. Official Code § 25-313. The catered site protest hearing shall be limited to no more than two hours total or one hour for each side.

2008.4 Notice of receipt of the written request and the scheduled hearing shall be served by the Board on the protestants, the owner of an event site, and all caterers who have catered or are scheduled to cater an event at the site.

2008.5 At the preliminary hearing, the Board shall validate that protestants with standing pursuant to D.C. Official Code § 25-601 exist. Upon determining that protestants with standing exist, the Board shall schedule and conduct a catered site protest hearing pursuant to the procedures set forth in Chapter 4 of Title 25 of the D.C. Official Code.

2008.6 The Protestant, the owner of an event site, and the caterer(s) for the event(s) in question shall be considered parties to the catered site protest hearing and shall have the right to present and cross-examine witnesses.

2008.7 The parties may agree to continue the catered site protest hearing in order to facilitate resolution of complaints or to reach a cooperative/voluntary agreement. The Board may also require that a settlement conference be held pursuant to D.C. Official Code § 25-445 prior to holding a catered site protest hearing.

2008.8 The Board, upon the completion of a catered site protest hearing, may prohibit or place restrictions upon the number, nature, or size of events, or caterers permitted at a site in its written order which shall be issued pursuant to the procedures set forth in D.C. Official Code § 25-433.

2008.9 An event site shall be permitted to have catered events pending the outcome of the catered site protest hearing.

2008.10 An event site shall not be subject to a protest hearing more than once every two years from a particular individual or entity.

2008.11 The catered site protest hearing shall not be subject to the referendum process set forth in D.C. Official Code §§ 25-603 through 25-609.

2008.12 Events held in private residences that do not require an ABC license under D.C. Official Code § 25-102 shall not be subject to catered site protest hearings.

2008.13 The Board may deny a request for a catered site protest hearing if such a request is found to be facially deficient or meritless.

## **2009. CATERER SHOW CAUSE AND SUMMARY SUSPENSION PROCEEDINGS**

2009.1 The Board in response to written complaints from the public expressing concerns about disruptive activity or unlawful conduct at an event site or as a result of its own investigation may institute a show cause hearing pursuant to the procedures set forth in § 1604 of this title or a summary suspension or summary revocation hearing pursuant to the procedures set forth in D.C. Official Code § 25-826.

2009.2 Notice of a show cause or a summary suspension or summary revocation hearing shall be provided by the Board to the holder of the Caterer's license. Where the issues at the hearing may involve the interests of an event site, the owner of an event site shall also be given notice of the hearing.

2009.3 If the Board determines that disruptive activity or unlawful conduct has occurred at the event site, then the Board may place restrictions upon the number, nature, or size of events permitted at a site. If the Board determines that the activity or conduct is the product of the actions of a specific caterer, then the Board may fine, suspend, or revoke the Caterer's license pursuant to Chapter 8 of Title 25 of the D.C. Official Code.

**CHAPTER 21. RESTAURANT AND HOTEL FOOD REQUIREMENTS****2100. RESTAURANT AND HOTEL QUALIFICATIONS**

2100.1 A Class CR or DR Retailer's license shall be issued only to a restaurant as defined in D.C. Official Code § 25-101(43). A Class CH or DH Retailer's license shall be issued only to a hotel as defined in D.C. Official Code § 25-101(25). To qualify for or renew a Class CR, DR, CH, or DH Retailer's license, a restaurant or hotel must meet the requirements of either § 2100.2 or § 2100.3.

2100.2 An ABC establishment shall qualify as a restaurant or hotel if it meets the following requirements:

- (a) It is regularly ready, willing, and able to prepare and serve food. The kitchen shall be regularly open, a menu as defined in § 199 of this title must be in use, sufficient food shall be on hand to serve the patrons from the menu, and proper staff must be present to prepare and serve the food.
- (b) It is held out to and known by the public as primarily a food-service establishment, and it is accessible as such. Advertising and signs shall emphasize food rather than alcoholic beverages or entertainment. Menus must be readily available to patrons until the kitchen is legally permitted to close. The establishment shall be open regular hours that are clearly marked with no unusual barriers to entry (such as cover charges or membership requirements). Establishments with an entertainment endorsement shall be permitted to charge a cover and advertise entertainment but may not primarily advertise drink specials.
- (c) A Retailer's license Class CR (restaurant) or a Retailer's license Class CH (hotel) must derive a gross annual food sale figure of one thousand five hundred dollars (\$1500) or more per occupant per year (as determined by the establishment's ABC approved certificate of occupancy). A Retailer's license Class DR (restaurant) or a Retailer's license Class DH (hotel) shall be required to derive a gross annual food sale figure of one thousand dollars (\$1000) or more per occupant per year.

2100.3 An establishment shall also qualify as a restaurant or a hotel if it: (1) has adequate kitchen and dining facilities and (2) the sale of food accounts for at least 45% of the establishment's gross annual receipts.

2100.4 Cover charges or the sale of items other than food or beverage shall not be included in determining an establishment's food sales figure or whether the sale of food accounts for at least 45% of the establishment's gross annual receipts. However, minimum charges that are readily identifiable as food or beverage shall be included in calculating whether the establishment is meeting the food requirement set forth in § 2100.2 or § 2100.3.

2100.5 The off-site food sales by a Retailer's license Class CR, DR, CH, or DH shall also not be included for purposes of calculating whether the establishment is meeting the food requirement set forth in either § 2100.2 or § 2100.3.

#### **2101. FOOD REQUIREMENT COMPLIANCE**

2101.1 The Board shall monitor Class CR, DR, CH, and DH licensed establishments for compliance with the food requirements set forth in § 2100.2 and § 2100.3.

2101.2 The initial auditing period to check for compliance with either § 2100.2 or § 2100.3 shall be not less than one quarter. The Board shall continue to monitor an establishment who is found not to be in compliance for a period of one-year.

2101.3 Substantial lack of compliance by the holder of a Retailer's license Class CR, DR, CH, or DH for a single year should result in sanctions and continued monitoring, and may be used as contributing evidence of non-compliance with Title 25 of the D.C. Official Code and this title in protests or other proceedings. Substantial lack of compliance over a full year shall result in sanctions that may include revocation by the Board or a change in license class where permissible. The Board shall follow the show cause notice procedures prior to imposing any sanction against a licensee.

2101.4 Minimal lack of compliance by the holder of a Retailer's license Class CR, DR, CH, or DH for a single year shall result in a show cause hearing with the Board imposing one or more of the penalties set forth in § 2101.5, excluding revocation. The Board may issue a warning and continue monitoring of an establishment with a minimal lack of compliance where the establishment was in compliance with the food requirements of § 2100.2 and/or § 2100.3 for the majority of the year that the establishment was monitored. An ABC establishment found by the Board to have a minimal lack of compliance for two or more successive years shall be deemed to have a substantial lack of compliance with the food requirement.

2101.5 The Board may impose the following additional or alternative sanctions against an establishment who is in non-compliance with the minimum food requirement: (a) revocation of the establishment's entertainment endorsement, if any; (b) a reduction in the establishment's operating hours; (c) a fine based upon the primary tier fine schedule set forth in D.C. Official Code § 25-830(c) and § 801 of this title; (d) revocation or suspension of the license, or (e) require a change in license class where permissible.

#### **2102. FOOD REQUIREMENT RECORDS**

2102.1 Each holder of a Retailer's license Class CR, DR, CH, or DH shall keep and maintain on the premises for a period of three (3) years adequate books and records showing all sales, purchase invoices and dispositions including the following:

- (a) A Monthly Sales Journal which includes the date, the price of food sold, the



price of alcoholic beverages sold, and the amount of total sales;

- (b) A Monthly Purchase Journal which includes the date and quantity of the purchase, the name, address, and phone number of the wholesaler and or vendor with the original invoice;
- (c) Register receipts or guest checks, which may be kept daily or weekly that include the food sold, the alcoholic beverages sold, and the amount of total sales.

2102.2 Any licensee may file a written request with the Board to have his books and records, except the day to day records and/or register receipts, kept at an accountant's office or the licensee's office, provided that the records are made available within three days of being requested by ABRA staff.

2102.3 The failure of a holder of a Retailer's license Class CR, DR, CH, or DH to keep and maintain records as required by this section shall be subject to the following penalties:

- (a) One quarter of non-compliance shall result in a fine not to exceed three thousand dollars (\$3,000) and ABC monitoring.
- (b) Non-compliance after two quarters shall result in a fine not to exceed four thousand five hundred dollars (\$4500) and/or license suspension for a period not to exceed five days.
- (c) Non-compliance after three or more quarters shall result in a show cause hearing for revocation or a mandatory change in license class.

2102.4 A violation of this section shall also be deemed a primary tier violation under D.C. Official Code 25-830(c).

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENTNOTICE OF PROPOSED RULEMAKING

The Director of the Department of Housing and Community Development, pursuant to the authority set forth in § 2 and 5 of the District of Columbia Home Purchase Assistance Act of 1978, D.C. Law 2-103, D.C. Code §§ 42-2601 and 42-2604 (2001), as amended and Mayor's Order No. 80-8 (January 14, 1980), hereby gives notice of his intent to amend, in not less than thirty (30) days from the date of publication of this notice in the D.C. Register, Title 14 of the District of Columbia Municipal Regulations (DCMR), Chapter 25, Home Purchase Assistance Program (HPAP). Specifically, the amendment of Subsections 2503.1, 2504.1, 2504.2, 2504.3, 2505.1, 2505.7, and 2506.1; the deletion of Subsection 2507; and the addition of Subsection 2502.6.

The purpose of the amendment is to (1) increase the maximum loan amount for the various components of the program; (2) eliminate the payment scale for lower-income applicants; (3) defer the repayment requirements for all components for five years; (4) capture the requirement for the repayment of the loans when the property ceases to be the Borrower's principal place of residence; (5) establish a maximum mortgage amount; (6) incorporate the lead safe housing requirements; and (7) eliminate the section requiring participation in market increased equity. The proposed rulemaking shall be submitted to the City Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays and days of Council recess. If the Council does not approve or disapprove the proposed review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204); D. C. Code, § 1-15-1 et seq.

Section 2500 of Chapter 25 (Home Purchase Assistance Program) of Title 14 DCMR, is amended as follows:

Subsection 2502.5 is amended by adding the following sentence to the end of the paragraph:

A new Subsection 2502.6 is added to read as follows:

2502.5        Settlement is also subject to the federal and District lead safe housing regulations, including but not limited to, HUD Disclosure and Notice requirements and the EPA pamphlet; Visual Assessment; Paint Stabilization, if any required, use of Safe Work Practices and Clearance. Housing built after 1978 is exempt from these regulations. 24 CFR Part 35 Subpart K; DCMR Title 20, Chapter 8, Sec. 806 (1998).

A new Subsection 2502.6 is added to read as follows:

**Maximum Mortgage Amount**

2502.6        The maximum first trust loan amount shall not exceed the conventional conforming loan limit.

Subsection 2503.1 is amended to read as follows:

2503.1        The amount of financial assistance provided to an eligible household shall be as follows:

- (a) For very low-income applicants, the amount of financial assistance shall not exceed Thirty Thousand Dollars (\$30,000). The Director may increase the amount of financial assistance for very low-income households up to Thirty Five Thousand Dollars (\$35,000) when the following conditions apply:
  - (1) Applicant household demonstrates a need for additional assistance; and
  - (2) Applicant household is elderly, handicapped, disabled, or a displace household; and
- (b) For lower-income applicants, the amount of financial assistance provided shall not exceed Twenty Thousand Dollars (\$20,000); and
- (c) For moderate-income applicants, the amount of financial assistance provided shall not exceed Ten Thousand Dollars (\$10,000).

Subsection 2504.1 is amended to read as follows:

2504.1        For lower-income applicants, the monthly principal payment required for a Principal-Only loan shall be based on the amortization period of the first trust loan and payment shall begin five (5) years after the date of the loan execution.

Subsection 2504.2 is amended to read as follows:

2504.2        Loans made to very low-income households shall require monthly Principal-Only payments in an amount not less than the loan amount amortized over a four hundred eighty (480) month period and payment shall begin not less than five (5) years from the date of the loan execution.

Subsection 2504.3 is amended to read as follows:

2504.3        Loans made to moderate-income applicants shall be deferred for five (5) years and shall require repayment of the principal loan amount and interest at an annual interest rate to be established by the Department. The interest

rate may be at least two percentage points (2%) lower than the interest rate of the first deed of trust lender, but in no event less than a minimum interest rate of three percent per annum (3%). After the five year deferral, the loan shall be amortized concurrent with the remainder of the term of the first trust note securing the property.

Subsection 2505.1 is amended to read as follows:

- 2505.1 Except as provided for in Sections 2505 through 2507, all financial assistance under the Program shall be as follows:
- (a) For eligible very low-income applicants: Principal-Only Loans repayable, after five (5) years, consistent with Section 2504.2 of this Chapter, secured by a lien or subordinated trust on the property purchased and by other security instrument provided for in this chapter or deemed appropriate by the Department;
  - (b) For eligible lower-income applicants: Principal-Only Loans repayable, after five (5) year deferral, secured by a lien or subordinated trust on the property purchased and by other security instrument provided for in this chapter or deemed appropriate by the Department;
  - (c) For eligible moderate-income applicants: Interest Bearing Amortized Loans, repayable, after five (5) year deferral, consistent with §2504.3 of this Chapter, secured by a lien or subordinated trust on the property purchased and by the other security instruments provided for in this chapter or deemed appropriate by the Department.

Subsection 2505.7 is amended to read as follows:

- 2505.7 All Deferred Payment Loans under HPAP shall be secured by a recorded lien or subordinated trust on the property purchased unless this requirement is explicitly waived as provided for in §2500.5 of this chapter.

Subsection 2506.1 is amended to read as follows:

- 2506.1 Loans made under the Program shall require that the entire unpaid principal amount of the loan shall be repaid to DHCD immediately upon: (1) the sale or transfer of the property to another owner; (2) the property ceasing to be the borrower's principal place of residence; or (3) the refinancing of any other indebtedness secured on the property, if the refinancing shall result in any withdrawal of cash or equity value from the property by the loan recipient.

Subsection 2507 is deleted in its entirety

Any person desiring to comment on these proposed rules should submit comments in writing, not later than thirty (30) days from the date of publication of this notice in the D.C. Register, to William C. Jameson, Manager, Home Purchase Assistance Program, Department of Housing and Community Development, 801 North Capitol Street N.E., 6<sup>th</sup> Floor, Washington, D.C. 20002. Additional copies of these proposed rules may be obtained at that address.

**DEPARTMENT OF HUMAN SERVICES****NOTICE OF EXTENSION OF TIME FOR SUBMISSION OF PUBLIC  
COMMENT ON PROPOSED RULEMAKING REGARDING ELIGIBILITY  
REQUIREMENTS FOR SUBSIDIZED CHILD CARE**

The Acting Director of the Department of Human Services, pursuant to the authority set out in the Mayor's Reorganization Plan No.3 of 1986, Section 3 of the District of Columbia Employees Child Care Facilities Act of 1986, effective February 24 1997 (D.C. Law 6-169; D.C. Official Code, § 4-902), Section 2 of the Day Care Policy Amendment Act of 1998, effective April 13, 1999 (D.C. Law 12-216, § 2; D.C. Official Code, § 4-401.1), Section 503 of the Omnibus Budget Support Act of 1995, effective September 26, 1995 (D.C. Law 11-52 ; D.C. Official Code, § 4-409(h) and 4-410(b)), the Day Care Policy Act of 1979 Amendment Act of 1995, effective February 17, 1995 (D.C. Law 11-2, § 2; D.C. Official Code, § 4-410 (a-1), and Mayor's Order 98-11, dated February 9, 1998, hereby gives notice that the time to provide public comment on the Proposed Rulemaking entitled "Eligibility Requirements for Subsidized Child Care" (published at 50 DCR 6713, August 15, 2003) has been extended to October 17, 2003.

Comments should be addressed, in writing, to Barbara Ferguson Kamara, Executive Director, Office of Early Childhood Development, D.C. Department of Human Services, 717 14<sup>th</sup> Street, N.W., Suite 1200, Washington, D.C. 20005. Copies of the proposed rules may be obtained by writing to the above address or by walk-in at the following address: 717 14<sup>th</sup> Street, N.W., Suite 1200, Washington, D.C. 20005, Monday through Friday, between 8:15 a.m. and 4:45 p.m.

**DISTRICT OF COLUMBIA DEPARTMENT OF INSURANCE  
AND SECURITIES REGULATION**

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**NOTICE OF PROPOSED RULEMAKING**

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The Commissioner of the Department of Insurance and Securities Regulation, pursuant to the authority set forth in section 15 of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986, D.C. Law 6-97, D.C. Official Code § 50-314 (2001), gives notice of his intent to adopt the following amendments to Title 26, Chapter 8 of the District of Columbia Municipal Regulation ("DCMR"), in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The purpose of the new chapter is to require insurance companies to offer additional optional lines of insurance with specific limits and conditions, and to provide for deposit and payment options.

**TITLE 26, DCMR, CHAPTER 8 IS AMENDED TO READ AS FOLLOWS:**

Chapters 801 and 805 are repealed, and a new chapter 801 is added to read as follows:

**801 PREMIUMS**

- 801.1 Policy durations shall be for a term of not less than 6 months, except that the initial term for a new policyholder may be for a period of less than six (6) months, in which case the premium shall be computed on a pro-rata basis. The initial premium for a policy shall be collected in advance.
- 801.2 Insurance companies offering insurance pursuant to this chapter shall file rates and report statistics in accordance with the provisions of D.C. Official Code § 31-2700 *et seq.*
- 801.3 Under no condition shall any premium be waived or discounted while insurance is in force. Insurance shall be deemed in force until cancellation or nonrenewal is actually effected in accordance with the provisions of the policy and requirements of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986, D.C. Law 6-97, D.C. Official Code § 50-314.
- 801.4 (a) The minimum limits of taxicab liability insurance required to be offered in the District of Columbia shall be:
- (1) For bodily injury, twenty-five thousand dollars (\$25,000) per person/ fifty thousand dollars (\$50,000) per accident; and

(2) For property damage, ten thousand dollars (\$10,000) for each accident.

(b) In addition to the minimum limits of liability insurance required in subsection (a) above, insurance companies shall also be required to offer optional insurance in the following lines, with the prescribed dollar limits, and under the following conditions:

(1) Option A higher limits for taxicab liability: For bodily injury, fifty thousand dollars (\$50,000) per person/one hundred thousand dollars (\$100,000) per accident; and for property damage twenty-five thousand dollars (\$25,000);

(2) Option B higher limits for taxicab liability: For bodily injury, three hundred thousand dollars (\$300,000) per person/three hundred thousand dollars (\$300,000) per accident; and for property damage one hundred thousand dollars (\$100,000);

(3) Medical payments coverage for drivers of at least four thousand dollars (\$4,000) per occurrence;

(4) Medical payments coverage of at least five thousand dollars (\$5,000) per occurrence, per passenger;

(5) Loss of income benefits for full time drivers of at least two hundred fifty dollars (\$250) per week for 52 weeks;

(6) Insurance companies may institute multiple premium rate classifications; and

(7) Direct sales of insurance policies to policyholders, either from an insurance company or through a licensed producer.

801.5 Premium deposit requirements and payment options shall be as follows:

(a) A full six-month premium shall be one hundred percent (100%) of the gross six-month premium for the coverage afforded.

(b) Installment premium payment options:

(1) Forty percent (40%) of the total six-month premium plus an installment service charge of four dollars (\$4) must accompany the application as a deposit; thirty percent (30%) of the total six-month premium plus an installment service charge of four dollars (\$4) no later than two months after the effective date of the policy; and the balance, plus an installment service charge of four dollars (\$4), no later than four months after the effective date of the policy; or

(2) Any other payment plan approved by the Commissioner.



- (c) The installment premium payment option is not available if any portion of the six-month premium is financed by a premium finance company. If any portion of the six-month premium is financed after the installment premium payment option is elected, the servicing carrier may bill the insured immediately for the unpaid balance of the six-month premium.

Persons desiring to comment on the proposed rulemaking may submit their comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be addressed to Leslie Johnson, Hearing Officer, Department of Insurance and Securities Regulation, 810 First Street, N.E., Room 701, Washington, DC 20002. Copies of the proposed rules may be obtained from the Department at the above address.

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET, N.W., 2<sup>nd</sup> FLOOR, WEST TOWER  
WASHINGTON, D.C. 20005**

**NOTICE OF PROPOSED RULEMAKING**

**Electric Tariff 03-3, In the Matter of the Application of the Potomac Electric Power  
Company For Authority To Revise Schedule "S"—Standby Service**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to 2-505(a) and 34-601 of the District of Columbia Code,<sup>1</sup> of the Application of the Potomac Electric Power Company ("PEPCO" or "the Company") for Revised Schedule "S"—Standby Service ("Application").<sup>2</sup> The Commission will act upon PEPCO's Application in not less than 30 days from the date of publication of this Notice in the *D.C. Register*.

2. In its Application, PEPCO is requesting authority to revise the following tariff pages:

**ELECTRIC TARIFF, P.S.C.-D.C., No.1  
STANDBY SERVICE SCHEDULE "S"  
Original Pages R-16, R-16.1, and R-16.2**

3. PEPCO seeks to make several substantive changes to the tariff. Primarily, under the amended tariff, PEPCO will replace the Standby Facilities Charge with the application of the Distribution Services Charge to the total electric usage and load. PEPCO proposes this change essentially because the calculation procedure for the current Standby Facilities Charge is labor intensive, resulting in long delays in the customer's receipt of data necessary to determine whether a given project is cost effective. The calculation method of the proposed Distribution Services Charge will, according to PEPCO, obviate the need of the former method's lengthy and complicated procedure.

4. In addition to the above modification, other proposed tariff revisions include: (1) replacement of the word "Availability" with "Applicability" to make explicit that Standby Service is mandatory; (2) modification of the Character of Service paragraph to clarify that an electric supplier (either a third party supplier or the Company) must provide full Generation and Transmission requirements and that no split service is permitted; (3) addition of Rate Schedule and Distribution Billing paragraphs to explain that a customer's rate schedule will be determined

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<sup>1</sup> D.C. Code, 2001 Ed. §§ 2-505(a) and 34-601.

<sup>2</sup> *Electric Tariff 03-3, In the Matter of the Application of the Potomac Electric Power Company for Revised Schedule "S"—Standby Services*, Letter from Paul H. Harrington, Associate General Counsel for PEPCO, to Sanford M. Speight, Acting Commission Secretary, Public Service Commission of the District of Columbia (August 13, 2003).

based on the total electric load of a premise and that Distribution cost recovery is based on Distribution rates applied to the total load of the premise; (4) addition of a Standard Offer Service Billing paragraph to explain that PEPCO supplied Generation and Transmission service is billed on net usage and any incremental Generation and Transmission cost caused by a customer's generation will be applied to the bill; (5) addition of a Metering paragraph to specify that a customer must have metering and communication equipment which allows the Company to monitor and meter the output of the customer's on-site generation; and (6) modification of the Parallel Operation paragraph to indicate that a customer will enter into an interconnection agreement with the Company.

5. The proposed tariff pages are on file with the Commission. A copy of the tariff may be reviewed at the Office of the Commission Secretary, Second Floor, West Tower, 1333 H Street, N.W., Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. A copy of the proposed tariff pages and attachments are available, upon request, at a per page reproduction fee. Comments on the proposed tariff revisions, setting forth the specific grounds for each representation, should be made in writing to Sanford M. Speight, Acting Commission Secretary, at the above address. Comments must be received within 30 days of publication of this Notice in the *D.C. Register*.

## DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

DOCKET NUMBER 03-61-TS

The Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02, 50-921.04(3) and 50-921.05), and sections 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a)(6) and (b)), hereby gives notice of the intent to amend the Vehicle and Traffic Regulations (18 DCMR). Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following rulemaking action is proposed:

Title 18 DCMR, Section 4004, ONE-WAY STREETS, Subsection 4004.1, (d) Southeast Section, is amended by adding the following to the list of locations where traffic is restricted to one direction of travel:

“Erie Street, S.E., between Pomeroy Road and Elvans Road, for eastbound traffic only”.

Title 18 DCMR, Section 4008, STOP SIGNS, Subsection 4008.1, (d) Southeast Section, is amended by deleting the following from the list of locations where the Director has authorized the placement of STOP signs:

“On Erie Street, S.E., so as to stop at Pomeroy Road”.

All persons interested in commenting on the subject matter in this proposed rulemaking action may file comments in writing, not later than thirty days (30) days after the publication of this notice in the D.C. Register, with the Department of Transportation, Traffic Services Administration, 2000 14<sup>th</sup> Street, N.W., 7<sup>th</sup> Floor, Washington, D.C. 20009 (Attention: Docket No. 03-61-TS). Copies of this proposal are available, at cost, by writing to the above address.

## DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF EXTENSION OF COMMENT PERIOD

The District of Columbia Department of Transportation ("DDOT") published a Proposed Rulemaking, Docket Number 03-57-TS, to provide for two-way traffic on 26<sup>th</sup> Street, N.W., from M Street, N.W., to Pennsylvania Avenue, N.W., at 50 DCMR 6463 on August 8, 2003. The comment period for this Proposed Rulemaking was scheduled to close on August 22, 2003. However, due to the high level of public interest in this rulemaking, DDOT hereby extends the comment period until October 24, 2003 to ensure that all interested parties have the opportunity to comment.

All persons interested in commenting on the subject matter in the proposed rulemaking action may file comments in writing with the District of Columbia Department of Transportation, Traffic Services Administration, 2000 14<sup>th</sup> Street, N.W., 7<sup>th</sup> Floor, Washington, D.C. 20009 (Attention Docket Number 03-57-TS).

**DISTRICT OF COLUMBIA  
OFFICE OF THE DEPUTY MAYOR FOR  
PUBLIC SAFETY AND JUSTICE**

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Deputy Mayor for Public Safety and Justice, pursuant to the authority set forth in section 14 of the Office of Administrative Hearings Establishment Act of 2001 (the "Act"), effective March 6, 2002, (D.C. Law 14-76; D.C. Official Code § 2-1831.11 (a) (2002 Supp.)), Mayor's Order 2003-53, dated May 2, 2003, and § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2001 ed.)), hereby gives notice of the adoption, on an emergency basis, of the following amendment of Title 6 DCMR by adding a new Chapter 37. The amendment will add a new chapter 37 to Title 6 and will prescribe standards and procedures for the operations of the Commission on the Selection and Tenure of Administrative Law Judges pertaining to the appointment, reappointment, discipline, removal and qualifications of Administrative Law Judges in the Office of Administrative Hearings (the "Office") established by the Act. This action was taken on an emergency basis to ensure that there is adequate time to recruit and hire Administrative Law Judges for the new Office of Administrative Hearings, which will begin operations during Fiscal Year 2004. This emergency rulemaking is necessary for the preservation of public health, safety and welfare. This emergency rule was adopted on October 2, 2003, and became effective on that date.

The Deputy Mayor also gives notice of her intent to take final rulemaking action to adopt the amendment adding a new Chapter 37 to Title 6 DCMR in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* and upon expiration of a 45 day Council review period or affirmative approval by the Council in less than 45 days, pursuant to D.C. Official Code § 2-1831.11(a).

This emergency rule will expire on January 30, 2004, 120 days after its adoption, or upon publication of a notice of final rulemaking in the *D.C. Register*, whichever occurs first.

Title 6 DCMR is amended by adding a new Chapter 37 to read as follows:

**CHAPTER 37**

**APPOINTMENT, REAPPOINTMENT, DISCIPLINE AND REMOVAL OF  
ADMINISTRATIVE LAW JUDGES BY THE COMMISSION ON SELECTION AND  
TENURE OF ADMINISTRATIVE LAW JUDGES**

**3700           SCOPE OF THIS CHAPTER**

3700.1           This Chapter establishes standards and procedures for the appointment, reappointment, discipline, removal and qualifications of Administrative Law

Judges in the Office of Administrative Hearings who hold office pursuant to section 11 of the Act, D.C. Official Code § 2-1831.09.

3700.2 This Chapter does not apply to the appointment, reappointment, discipline or removal of a Chief Administrative Law Judge or to a Chief Administrative Law Judge's assumption of a position as a Senior Administrative Law Judge pursuant to sections 7(d) and 7(e) of the Act (D.C. Official Code § 2-1831.05(d) and (e)). In accordance with section 7(e) of the Act, this Chapter does apply to the reappointment of any Senior Administrative Law Judge to any subsequent ten-year term and to the discipline or removal of any Senior Administrative Law Judge at any time.

3700.3 This Chapter does not apply to the appointment, reappointment, discipline or removal of any employee of the Office other than those set forth in sections 3700.1 and 3700.2.

**3701 APPOINTMENT OF PERSONS OTHER THAN HEARING OFFICERS  
TO AN INITIAL TWO-YEAR TERM AS ADMINISTRATIVE LAW  
JUDGES**

3701.1 Administrative Law Judges, other than hearing officers seeking an appointment authorized by section 11(e) of the Act (D.C. Official Code § 2-1831.08(e)), shall be appointed to an initial two-year term in the manner prescribed in this section.

3701.2 The Commission shall have final authority to appoint Administrative Law Judges to an initial two-year term, pursuant to sections 9(b) and 11(c) of the Act (D.C. Official Code §§ 2-1831.06(b) and 2-1831.08 (c)).

3701.3 The Commission shall not appoint any person as an Administrative Law Judge who does not satisfy the qualifications prescribed in section 3703 or other applicable law.

3701.4 All vacant Administrative Law Judge positions shall be advertised in a portion of a daily or weekly periodical that is likely to be seen by highly qualified public and private sector attorneys in the District of Columbia who are seeking or considering positions as attorneys or Administrative Law Judges in the District of Columbia Government, except for:

- (a) Positions to be filled by persons covered by section 11(e) of the Act, (D.C. Official Code § 2-1831.08(e)); and
- (b) Positions open only to Administrative Law Judges already appointed pursuant to this Chapter.

3701.5 In considering appointments subject to this section, the Commission may be assisted by an initial review panel appointed in conformity with sections 3701.7 to 3701.16. Any initial review panel shall follow the procedures set forth in sections 3701.17 to 3701.24, and, if it uses an initial review panel, the

Commission shall follow the procedures set forth in sections 3701.25 to 3701.26. Alternatively, the Commission may proceed in any other manner consistent with the Due Process Clause of the Fifth Amendment to the United States Constitution, but all appointments must be approved by a majority of the voting members of the Commission.

- 3701.6 Neither the Commission nor any initial review panel shall discriminate in any manner prohibited by the Constitution or by federal or District of Columbia law.
- 3701.7 An initial review panel shall consist of at least five and no more than seven members.
- 3701.8 The Chief Administrative Law Judge shall be a member of every initial review panel, or may designate an Administrative Law Judge to act for him or her on any initial review panel.
- 3701.9 Upon request, any member of the Commission may be a member of an initial review panel.
- 3701.10 Other members of an initial review panel may be Administrative Law Judges, members of the District of Columbia Bar who are familiar with trial-level litigation (including members in private practice, in government service or in teaching positions), non-lawyer members of the public experienced in issues likely to come before the Office, and non-lawyer senior management officials of agencies whose cases are adjudicated by the Office.
- 3701.11 No person may serve as a member of an initial review panel if he or she is personally representing a party in any matter pending before the Office. In addition, any person who serves on an initial review panel may not appear as an attorney or otherwise participate in any professional or representative capacity in any matter pending before the Office until one year after the completion of his or her service on the initial review panel. This subsection does not prohibit any Administrative Law Judge or any other employee of the Office from performing his or her assigned duties.
- 3701.12 **[RESERVED]**
- 3701.13 If one or more vacancies exist, and an initial review panel is to be used, the Chief Administrative Law Judge shall file with the Commission a list of proposed members of an initial review panel for a specific vacancy or vacancies. The Chief Administrative Law Judge shall specify the number of vacancies for which each individual review panel is to be formed.
- 3701.14 Each person named in the list submitted by the Chief Administrative Law Judge may become a member of an initial review panel if a majority of the voting members of the Commission approves such person.



- 3701.15 Any voting member of the Commission who disapproves of any proposed member of an initial review panel shall file a written statement to that effect with the Commission within ten days of the filing of the list with the Commission.
- 3701.16 Any person who has not been disapproved by a majority of the voting members of the Commission within fifteen (15) days of the filing of his or her name with the Commission shall be deemed to be approved by the Commission as a member of an initial review panel.
- 3701.17 An initial review panel shall review the applications of all persons for the vacancy or vacancies for which the panel has been formed.
- 3701.18 Based upon the applicants' written submissions, the initial review panel shall select the most highly qualified applicants from the group for interviews.
- 3701.19 An initial review panel may conduct one or more rounds of interviews. A majority of the members of each initial review panel shall be present for an interview of any applicant. If an initial review panel member is not present for a final round interview of any applicant, he or she may not vote or otherwise participate in the initial review panel's decision to forward applications to the Commission pursuant to sections 3701.20 through 3701.24, but he or she may participate in the deliberations of the individual review panel leading to that decision.
- 3701.20 For each vacancy for which it was formed, an initial review panel may forward to the Commission the applications of one or more applicants whom it determines to be highly qualified to serve as an Administrative Law Judge.
- 3701.21 **[RESERVED]**
- 3701.22 In deciding which applications, if any, should be forwarded to the Commission, an initial review panel shall consider the candidates' legal knowledge, judgment, analytical skills, the amount and the quality of their experience in the practice of law, their judicial temperament and character, their case management skills, and their ability to contribute to the mission of OAH.
- 3701.23 An initial review panel shall not forward to the Commission the application of any candidate who does not satisfy the qualifications prescribed in the Act and in section 3703.
- 3701.24 An initial review panel shall not forward to the Commission the application of any applicant who fails to submit:
- (a) A certificate of good standing, issued no earlier than thirty (30) days before such submission, from the appropriate court of every jurisdiction in the United States to whose Bar the applicant has been admitted,

demonstrating that the applicant is a member in good standing of such Bar, except that no such certificate from any federal court is necessary; and

- (b) A certification, issued no earlier than thirty (30) days before such submission, from the Bar Counsel, Grievance Committee or similar office in each jurisdiction described in subsection (a) stating whether there are or have been any disciplinary complaints against the applicant and whether any discipline has been imposed upon the applicant.

- 3701.25 The Commission shall consider all applications forwarded to it by an initial review panel and shall interview all candidates whose names are forwarded by an initial review panel. At least two voting members of the Commission shall attend any interview of an applicant.
- 3701.26 For any vacancy, the Commission may appoint a candidate from among the candidates whose applications were forwarded to it by an initial review panel for that vacancy pursuant to section 3701.20. In making its decision, the Commission shall evaluate the candidates' legal knowledge, judgment, analytical skills, the amount and the quality of their experience in the practice of law, their judicial temperament and character, their case management skills, and their ability to contribute to the mission of OAH. The Commission may decide not to appoint any of the candidates forwarded to it by an initial review panel.
- 3701.27 For a candidate to be appointed, a majority of the voting members of the Commission must vote in favor of the appointment.
- 3701.28 Any person appointed by the Commission to an initial two-year term pursuant to this section shall enter onto duty no later than 60 days after his or her receipt of written notice of the appointment, and his or her term shall commence on the date of his or her entry onto duty.
- 3701.29 For good cause, and upon request of the appointee, the Commission may extend the 60-day deadline established in section 3701.28 for a single period of 30 days.
- 3701.30 If a person appointed by the Commission does not enter onto duty within the deadline provided in sections 3701.28 and 3701.29, the appointment shall expire and the appointee's position shall be deemed to be vacant.

**3702 APPOINTMENT OF HEARING OFFICERS TO AN INITIAL TWO-YEAR TERM AS ADMINISTRATIVE LAW JUDGES**

- 3702.1 A hearing officer serving in an agency to which the Act becomes applicable and who is eligible for an appointment as an Administrative Law Judge pursuant to section 11(e) of the Act (D.C. Official Code § 2-1831.08(e)) may be appointed by the Commission to an initial two-year term as an Administrative Law Judge only in compliance with this section.

- 3702.2 No person who has been serving as a hearing officer for less than one year before the Act becomes applicable to his or her agency shall be eligible for appointment as an Administrative Law Judge pursuant to section 11(e) of the Act (D.C. Official Code § 2-1831.08(e)) unless his or her employment as a hearing officer has been authorized in writing by the Chief Administrative Law Judge or his or her designee.
- 3702.3 Any hearing officer who does not satisfy the requirements of section 3702.2 is eligible to be considered for appointment as an Administrative Law Judge pursuant to section 11(b) of the Act (D.C. Official Code § 1831.08 (b) and section 3701 of these rules.
- 3702.4 At least three months before the Act becomes applicable to his or her agency, a hearing officer who wishes to be appointed to an initial two-year term as an Administrative Law Judge pursuant to section 11(e) of the Act, D.C. Official Code § 2-1831.08(e), shall file with the Chief Administrative Law Judge a request for such appointment.
- 3702.5 The Chief Administrative Law Judge may prescribe a form for the submission of such a request. The form may require information reasonably necessary to show that the hearing officer meets the qualifications set forth in the Act or in this Chapter.
- 3702.6 Each request shall demonstrate that the hearing officer is qualified for appointment as an Administrative Law Judge pursuant to section 11(e) of the Act, D.C. Official Code § 2-1831.08(e). The request shall contain:
- (a) A description of the hearing officer's current position in a covered agency and the amount of time he or she has been so serving;
  - (b) A certificate of good standing, issued no earlier than thirty (30) days before submission of the request, from the appropriate court in every jurisdiction in the United States to whose Bar the hearing officer has been admitted, demonstrating that the hearing officer is a member in good standing of such Bar, except that no such certificate from any federal court is necessary;
  - (c) A certification, issued no earlier than thirty (30) days before submission of the request, from the Bar Counsel, Grievance Committee or similar authority in each jurisdiction described in subsection (b) stating whether there are or have been any disciplinary complaints against the hearing officer and whether any discipline has been imposed upon the hearing officer.
  - (d) A description of the hearing officer's experience in the practice of law, showing that the hearing officer has at least five years experience in the practice of law, including experience with court, administrative or arbitration litigation.

- 3702.7 The Chief Administrative Law Judge shall forward all timely requests for appointment to the Commission.
- 3702.8 The Commission shall examine each hearing officer's request and shall conduct, or direct the Chief Administrative Law Judge or any person designated by the Chief Administrative Law Judge to conduct, inquiries that it deems sufficient to verify the information submitted by a hearing officer and to verify that the hearing officer satisfies the standards prescribed in section 3703.
- 3702.9 If the Commission finds that the hearing officer satisfies the qualifications set forth in this section 3702 and in section 3703, it shall appoint the hearing officer to an initial two-year term as an Administrative Law Judge. A majority of the voting members of the Commission must approve all such appointments.
- 3702.10 The term of a hearing officer appointed as an Administrative Law Judge pursuant to this section shall commence on the day that the Act becomes applicable to cases heard by the agency by which he or she is employed when the request is submitted to the Chief Administrative Law Judge.
- 3702.11 For a former hearing officer to remain qualified for his or her appointment as an Administrative Law Judge, he or she must pass a qualifying examination approved by the Commission pursuant to section 3704 of this Chapter, either before the appointment takes effect, or within 18 months of the appointment's effective date.
- 3702.12 If a qualifying examination approved by the Commission has not been offered and graded at least three times between the date of submission of a hearing officer's request for appointment and 18 months after the effective date of his or her appointment, the deadline for a hearing officer to remain qualified by passing the qualifying examination shall be extended until such an examination has been offered and graded three times after the date of submission of the hearing officer's request for appointment.

### **3703 QUALIFICATIONS OF ADMINISTRATIVE LAW JUDGES**

- 3703.1 An Administrative Law Judge must be a member of the District of Columbia Bar at the time of his or her appointment, and must remain a member of the District of Columbia Bar throughout his or her tenure as an Administrative Law Judge.
- 3703.2 At the time of appointment, an Administrative Law Judge must have at least five years' experience in the practice of law, including substantial litigation experience in court, in an administrative agency or in arbitration.
- 3703.3 An Administrative Law Judge appointed to a position at Grade 15 or below is subject to the residency requirements applicable to attorneys pursuant to section 906(c) of the District of Columbia Government Comprehensive Merit Personnel

Act of 1978, effective March 3, 1979, D.C. Law 2-139, as amended (D.C. Official Code § 1-609.06(c)).

- 3703.4 An Administrative Law Judge appointed to a position at a level higher than Grade 15 shall be subject to the residency requirements placed on members of the Senior Executive Attorney Service pursuant to section 859 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.59).
- 3703.5 An Administrative Law Judge shall possess judicial temperament, judgment, expertise, experience and analytical and other skills necessary and desirable for an Administrative Law Judge.
- 3703.6 An Administrative Law Judge shall be a person of good moral character. Without limiting the foregoing, no person may be appointed or serve as an Administrative Law Judge who:
- (a) Has been convicted (on any plea) of a felony at any time;
  - (b) Has been convicted (on any plea) of a misdemeanor involving moral turpitude within the ten (10) years preceding the date of his or her appointment; or
  - (c) Has been convicted (on any plea) of a misdemeanor involving moral turpitude while serving as a hearing officer, without regard to the date of conviction.

This section shall not preclude the appointment or service as an Administrative Law Judge of any person who has been pardoned for any offense described in subsections (a) through (c).

- 3703.7 The Commission may seek any information concerning an applicant that will assist it in determining whether the applicant satisfies any of the standards of this Chapter.
- 3703.8 No person may be appointed or re-appointed to any term as an Administrative Law Judge who fails to provide any necessary release or fails to cooperate in any other way with the efforts of the Commission or any of its designees to obtain any of the information described in section 3703.7.
- 3703.9 Except as provided in sections 3702.11 and 3702.12, no person may be appointed as an Administrative Law Judge unless that person has obtained a passing grade on a qualifying examination devised and administered in accordance with section 3704.

#### **3704 QUALIFYING EXAMINATION**

- 3704.1 No qualifying examination may be administered unless it has been approved by the Commission as provided in this section.
- 3704.2 Except as provided in section 3702.11, only applicants whom an initial review panel decides to interview in a final round interview may take the qualifying examination. If the Commission decides, pursuant to section 3701.5 of this Chapter, not to use an initial review panel, it shall decide, in its sole discretion, which applicants for a particular position shall be permitted to take the qualifying examination.
- 3704.3 The Chief Administrative Law Judge shall propose questions, model answers and grading standards for each qualifying examination.
- 3704.4 The Chief Administrative Law Judge shall submit each proposed version of the qualifying examination, including the questions, the model answers and the grading standards to the Commission for its approval. No examination may be used unless a majority of the voting members approves the questions, the model answers and the grading standards.
- 3704.5 In preparing any version of a qualifying examination, the Chief Administrative Law Judge may seek assistance from law school faculty members, Administrative Law Judges or others with suitable knowledge and experience who will not be taking that version of the examination.
- 3704.6 No version of the qualifying examination may be administered more than once.
- 3704.7 No person who has assisted the Chief Administrative Law Judge in preparing a specific qualifying examination may sit for the examination for which he or she has provided such assistance.
- 3704.8 Except as authorized by this Section 3704, no person shall reveal the contents of an examination to any other person before administration of that examination is completed.
- 3704.9 The examination shall test analytical writing skills, case management skills, and legal reasoning skills.
- 3704.10 The examination shall be graded on a pass/fail basis by members of an initial review panel appointed pursuant to sections 3701.7 - 3701.16 or by attorney graders approved by the Commission in the manner described in sections 3701.7 - 3701.16.
- 3704.11 The examination shall be graded anonymously, and graders shall not seek or receive any information about the identity of a person who submits a particular examination before the grading process is complete. If any person provides or attempts to provide such information to a grader, the grader shall report it in writing to the Chairperson of the Commission and the Chief Administrative Law Judge.

- 3704.12 Each grader shall grade each examination independently. For an examination to receive a passing grade, at least fifty percent (50%) of the assigned graders must award it a passing grade.
- 3704.13 The examination shall be graded non-competitively, and neither the initial review panel nor the Commission shall use the examination to rank applicants in any way, other than to distinguish those who pass from those who fail.
- 3704.14 The decision of the graders shall be final, and neither the Commission nor an initial review panel may review the graders' decision.
- 3704.15 In forwarding applications to the Commission, the initial review panel shall inform the Commission only that an applicant has passed the examination, and shall give no other information about the applicant's performance on the examination.
- 3704.16 Applicants will be informed whether or not they passed the examination, but neither the initial review panel nor the Commission shall disclose any other information about an applicant's performance on an examination.
- 3704.17 All examination papers shall be destroyed 30 days after they are graded.
- 3704.18 If an applicant receives a passing grade on any qualifying examination but is not appointed as an Administrative Law Judge, such applicant shall be deemed to have satisfied the requirement of section 3703.9 for any vacancy arising within three years of the date that he or she sat for the examination.
- 3704.19 Whenever hearing officers will be eligible to be appointed as Administrative Law Judges pursuant to section 11(e) of the Act (D.C. Official Code § 2-1831.08(e)), the Chief Administrative Law Judge shall use his or her best efforts to arrange for the administration of at least three qualifying examinations during the period between four (4) months before and eighteen (18) months after the date when the Office begins hearing cases from such officers' agency.

**3705 REAPPOINTMENT OF ADMINISTRATIVE LAW JUDGES**

- 3705.1 No earlier than nine (9) months before the expiration of an Administrative Law Judge's term of office, any Administrative Law Judge seeking reappointment to a new term (including a Senior Administrative Law Judge) shall file a statement with the Commission and with the Chief Administrative Law Judge requesting reappointment.
- 3705.2 If such a statement is not filed by any Administrative Law Judge at least six (6) months before the expiration of his or her term, a vacancy shall result from the expiration of the term of office and shall be filled by appointment as provided in section 3702.

- 3705.3 The statement may review significant aspects of the Administrative Law Judge's activities that the Administrative Law Judge believes will be helpful to the Commission in the evaluation of his or her candidacy for reappointment.
- 3705.4 For every Administrative Law Judge who files a statement in accordance with section 3705.1, the Chief Administrative Law Judge shall prepare a record for the Commission's review. That record shall contain:
- (a) Copies of performance evaluations of the Administrative Law Judge, as set forth below:
    - (1) For Administrative Law Judges completing a ten-year term, the record shall contain performance evaluations for at least the previous five years;
    - (2) For Administrative Law Judges completing a two-year term, the record shall contain all performance evaluations during his or her term;
  - (b) At least one year of decisions authored by the Administrative Law Judge;
  - (c) Copies of any other decisions that the Chief Administrative Law Judge deems relevant to the determination of the Administrative Law Judge's fitness for reappointment;
  - (d) Data on how the Administrative Law Judge has met applicable objective performance standards during his or her term;
  - (e) The Chief Administrative Law Judge's recommendation, with a statement of reasons, as to whether the Administrative Law Judge should be reappointed; and
  - (f) Any other information requested by one or more members of the Commission.
- 3705.5 The Chief Administrative Law Judge shall file the record required by section 3705.4 with the Clerk within 120 days of the filing of a statement by the Administrative Law Judge in accordance with section 3705.1.
- 3705.6 The Chief Administrative Law Judge shall serve a copy of the record upon the Administrative Law Judge no later than the same day that the record is filed with the Commission.
- 3705.7 As soon as practicable after receiving a statement of intent to seek reappointment from an Administrative Law Judge, the Commission shall publish a notice in the District of Columbia Register that the Administrative Law Judge is seeking reappointment and that the Commission is soliciting the views of litigants,



attorneys and members of the public on whether the Administrative Law Judge should be reappointed.

- 3705.8 The notice required by section 3705.7 shall call for comments to be submitted to the Commission within thirty (30) calendar days of its publication.
- 3705.9 The Commission shall provide copies of any comments it receives to the Administrative Law Judge, and shall redact the names and other information that identifies the person submitting the comments.
- 3705.10 Within ten (10) calendar days of service of the record or of the Commission's sending of public comments to the Administrative Law Judge, whichever is later, an Administrative Law Judge who wishes to respond to the Chief Administrative Law Judge's recommendation or to any public comments or to add information to the record that he or she believes should be considered with respect to his or her reappointment shall file with the Clerk a notice of intent to supplement the record. The Administrative Law Judge may file such a notice regardless of whether he or she files a request to appear before the Commission. The notice shall describe generally the additional information that the Administrative Law Judge intends to add to the record and shall be promptly transmitted to the members of the Commission by the Clerk.
- 3705.11 Within ten (10) calendar days of service of the record, or of the Commission's sending of public comments to the Administrative Law Judge, whichever is later, an Administrative Law Judge who wishes to appear before the Commission to be heard in person concerning his or her reappointment shall file with the Clerk a request to appear. The Administrative Law Judge may file such a request regardless of whether he or she has filed a notice of intent to supplement the record. The request shall be promptly transmitted to the members of the Commission by the Clerk.
- 3705.12 If the Administrative Law Judge does not timely file a notice of intent to supplement the record or a request to appear, the Commission may proceed to consider the application for reappointment based solely on the Administrative Law Judge's written statement, the record filed by the Chief Administrative Law Judge and any public comments.
- 3705.13 If an Administrative Law Judge files a notice of intent to supplement the record, he or she must file with the Commission and the Chief Administrative Law Judge any response to the Chief Administrative Law Judge's recommendation and any additional information that he or she wishes the Commission to consider within twenty (20) calendar days of filing the notice of intent to supplement.
- 3705.14 If an Administrative Law Judge fails to supplement the record within the deadline established in section 3705.13, the Commission may proceed to consider the reappointment without waiting for the filing of any supplement to the record by the Administrative Law Judge.

- 3705.15 If an Administrative Law Judge has filed a request to appear before the Commission, the Commission may not vote on his or her reappointment or issue a notice of grounds for possible denial of reappointment unless it affords the Administrative Law Judge an opportunity to appear before it.
- 3705.16 The Commission may request that an Administrative Law Judge appear personally or respond in writing to any questions or concerns it may have.
- 3705.17 No Administrative Law Judge may be denied reappointment unless the Commission first serves upon him or her a notice of grounds for possible denial of reappointment. Any such notice shall specify the reasons why the Commission is considering the possible denial of his or her application for reappointment and shall set a date, at least twenty (20) days after service of the notice, on which the Commission will meet to consider final action on the request for reappointment. The Commission may not take final action on the request for reappointment until the conclusion of such meeting.
- 3705.18 Within fifteen (15) days of service of a notice of grounds for possible denial of reappointment, an Administrative Law Judge may file a written response to the notice, and may request an opportunity to appear at the Commission's meeting.
- 3705.19 An Administrative Law Judge who timely files a request to appear at the Commission's meeting shall have the right to appear and be heard at the meeting. In its discretion, the Commission may permit other persons to testify at the meeting, either in support of, or in opposition to, the request for reappointment.
- 3705.20 The voting members of the Commission shall vote on the request for reappointment prior to the expiration of the Administrative Law Judge's term, but no earlier than 60 days prior to such expiration. In case of conflict between this section and section 3705.17, section 3705.17 shall control.
- 3705.21 In deciding whether to reappoint an Administrative Law Judge, the Commission shall consider all information it has received concerning the reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless they determine that the recommendation is not founded on substantial evidence. The Commission shall reappoint the Administrative Law Judge if it finds that the Administrative Law Judge has satisfactorily performed the responsibilities of his or her office and is likely to continue to do so.
- 3705.22 The Commission shall issue a written statement of reasons for every decision to reappoint or not to reappoint an Administrative Law Judge.
- 3705.23 The Commission's decision on whether to reappoint the Administrative Law Judge shall be final, and a decision not to reappoint an Administrative Law Judge shall not be deemed to be disciplinary action.

- 3705.24 Any decision by the Commission not to reappoint an Administrative Law Judge shall be reviewable only to the same extent as a decision of the District of Columbia Commission on Judicial Disabilities and Tenure giving an evaluation of "Unqualified."
- 3705.25 An Administrative Law Judge who is reappointed pursuant to this section shall serve a term of ten years, beginning on the expiration date of his or her current term, or on the date he or she is notified in writing of the Commission's vote, whichever is later.
- 3705.26 If the Commission does not vote on the reappointment of an Administrative Law Judge before the expiration of his or her current term, the Administrative Law Judge may, in the discretion of the Chief Administrative Law Judge, be retained as a non-judicial employee of the Office, without reduction in grade or step, until the Commission votes on his or her reappointment.

**3706 MISCELLANEOUS PROVISIONS**

- 3706.1 To file any document with the Commission pursuant to this Chapter, a person must deliver six copies of that document to the Clerk. The Clerk shall note the date of receipt on each filed document and shall arrange for prompt delivery of one of the copies to each member of the Commission. The Clerk shall retain the sixth copy in a suitably indexed file.
- 3706.2 Any document may be served upon an Administrative Law Judge by personal delivery to the Administrative Law Judge or by mail addressed to his or her home address. When service is by mail, three days shall be added to any period in this Chapter that is measured from the date of service.
- 3706.3 If the deadline for filing or serving any document falls on a Saturday, Sunday or legal holiday, that deadline is extended to the next day that is not a Saturday, Sunday or legal holiday.
- 3706.4 The Chief Administrative Law Judge shall take all necessary actions, including signing any required personnel forms, to effectuate the appointment or reappointment of any Administrative Law Judge appointed or reappointed by the Commission, but shall not violate the Act or the Anti-Deficiency Act, 31 U.S.C. § 1341 *et seq.*, in doing so.

**3707-3720 [RESERVED]**

**3721 TRANSACTION OF COMMISSION BUSINESS**

- 3721.1 The Commission shall operate in accordance with the provisions of the Office of Administrative Hearings Establishment Act of 2001, D.C. Law 14-76 (D.C. Official Code, §§ 2-1831.01, *et seq.*).
- 3721.2 The Chairperson, or his or her designee, shall preside at each meeting of the Commission.
- 3721.3 The Commission, in consultation with the Chief Administrative Law Judge, may make reasonable part-time use of the Clerk and other non-judicial employees of the Office of Administrative Hearings in connection with the Commission's official duties.
- 3721.4 Subject to the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, (D.C. Official Code §§ 2-301.01 *et seq.*), the Chairperson of the Commission may contract for the services of counsel and medical, psychological, health or other experts when the Chairperson determines and states in writing that good cause exists why such services should be procured independently of the Chief Procurement Officer.
- 3721.5 Meetings of the Commission shall be held at times agreed upon by the members of the Commission, or upon call by the Chairperson, or by two or more members of the Commission. Any meeting called shall be scheduled upon reasonable written notice to all members of the Commission, unless the requirement of written notice is waived by unanimous consent of all members of the Commission.
- 3721.6 The Chairperson, or his or her designee, may carry out routine Commission business (such as the granting of postponements pursuant to this chapter, authorization of preliminary inquiry into complaints regarding an Administrative Law Judge, and authorization of informal and non-determinative communications with an Administrative Law Judge or the Administrative Law Judge's counsel). Any of the foregoing shall be disclosed and reported to the Commission at its next meeting. Any act carried out by one of the above members may be reconsidered at the next meeting of the Commission upon motion.
- 3721.7 All matters pertaining to the potential appointment, re-appointment, discipline, or removal of an Administrative Law Judge shall, without limitation, be deemed to be personnel records that are confidential and personally private with regard to the Administrative Law Judge and otherwise protected under D.C. Code § 2-534 and other applicable law.
- 3721.8 Nothing in this chapter limits the authority of the Commission to issue a protective order as otherwise permitted by law.
- 3722 PHYSICAL EXAMINATIONS AND MEDICAL INFORMATION**

- 3722.1 At the Commission's written request for the purpose of evaluating an issue relating to the appointment, reappointment, discipline, or removal of an Administrative Law Judge, the Administrative Law Judge shall submit to one or more physical or mental examinations by a licensed physician, licensed psychologist, or other licensed health professional designated by the Commission after consultation with the Administrative Law Judge. The examination and report shall be made at the expense of the District of Columbia.
- 3722.2 The health professional shall report his or her findings in writing to the Commission.
- 3722.3 At the Commission's request and for the purposes stated in section 3722.1, an Administrative Law Judge shall provide the Commission with all waivers and releases necessary to authorize the Commission to receive all medical records, reports, and information from any health professional, health care facility, or other facility regarding the Administrative Law Judge's physical or mental condition.
- 3722.4 The failure of an Administrative Law Judge to submit to a physical or mental examination or to provide waivers and releases required under this section by the Commission may be used as the basis for drawing an adverse inference against the Administrative Law Judge.
- 3722.5 Copies of all medical records, reports, and information received by the Commission shall be provided to the Administrative Law Judge at his or her request, and shall be maintained as confidential, personal and private by the Commission.

**3723 FINANCIAL REPORTS**

- 3723.1 To the extent required under any code of professional responsibility for Administrative Law Judges adopted pursuant to section 8(a)(9) of the Act, D.C. Official Code § 2-1831.05(a)(9), each Administrative Law Judge shall file a copy of the disclosure form required by D.C. Official Code § 1-1106.02 with the Commission within five (5) days of filing it with the Board of Elections and Ethics.
- 3723.2 The intentional failure by an Administrative Law Judge to file a report required by this section, or the intentional or reckless filing of a materially inaccurate report, shall constitute willful misconduct in office and shall be grounds for removal from office, or other disciplinary action, by the Commission.

**3724 [RESERVED]****3725 PRECEDENTS**

- 3725.1      Provided that copies have been filed by the Commission with the Chief Administrative Law Judge in the Office of Administrative Hearings and maintained and made reasonably available for review, each Administrative Law Judge shall be deemed to be on notice of the following:
- (a)      The Commission's decisions in proceedings;
  - (b)      The Commission's evaluations of Administrative Law Judges who have been candidates for reappointment; and
  - (c)      Any written communication by the Commission to the Chief Administrative Law Judge specifying that Administrative Law Judges are to take notice of the communication.
- 3725.2      Each Administrative Law Judge shall be deemed to be on notice of any code of professional responsibility for Administrative Law Judges promulgated by the Chief Administrative Law Judge under section 8(a)(9) of the Act, D.C. Official Code § 2-1831.05(a)(9), and any interpretative authorities cited therein as persuasive or authoritative.
- 3725.3      Each Administrative Law Judge shall be deemed to be on notice of Administrative Orders and other issuances of the Chief Administrative Law Judge so long as such documents are maintained by the Office of Administrative Hearings and made reasonably available for review.
- 3725.4      To the extent a document covered by this section has been redacted, an Administrative Law Judge shall not be deemed to be on notice of the redacted material unless he or she has received it separately.

**3726-3728      [RESERVED]**

**3729      CAUSE FOR DISCIPLINE OR REMOVAL**

- 3729.1      Cause to discipline or remove an Administrative Law Judge under the Act includes any of the following:
- (a)      Willful misconduct in office, violation of applicable law or rules, including without limitation, any violation of a code of professional responsibility applicable to the Administrative Law Judge pursuant to section 8(a)(9) of the Act, D.C. Official Code § 2-1831.05(a)(9), or an Administrative Law Judge's willful and persistent failure to perform his or her judicial and other duties, including without limitation, the unexcused failure to meet annual performance standards in any two (2) years within a three (3) year period; or

- (b) Other conduct prejudicial to the administration of justice or which brings the judicial office into disrepute; or
- (c) Reckless or intentional material misrepresentation in securing or retaining his or her appointment or reappointment or intentional or reckless falsification of official records.

3729.2 Cause to remove an Administrative Law Judge includes:

- (a) Inability to discharge the duties of his or her office by reason of mental or physical condition or disability (including habitual intemperance) that has persisted for a period of at least one (1) year; or
- (b) Inability to discharge the duties of his or her office by reason of mental or physical condition or disability (including habitual intemperance) that is reasonably expected to persist for a period of at least one (1) year; or
- (c) An Administrative Law Judge's failure to satisfy all qualifications required by the Act or this Chapter at anytime during his or her term;

3729.3 A removal under section 3729.2 shall be designated as an involuntary retirement.

### **3730 INVESTIGATIONS**

3730.1 The Commission may investigate and deliberate to determine whether a formal proceeding to discipline or remove an Administrative Law Judge should be instituted. It may do so upon proposal of the Chief Administrative Law Judge, or upon receiving information giving it reason to believe that there may be cause to discipline or remove an Administrative Law Judge.

3730.2 The investigation may be carried out in any lawful manner that the Commission deems appropriate, including without limitation, interviews, document reviews, the taking of evidence at Commission meetings or by deposition, and the issuance of subpoenas when authorized by law.

3730.3 The Commission may elect to notify the Administrative Law Judge in writing of the pendency of the investigation if it would not be prejudicial to the interests of justice.

3730.4 If, after investigation, the Commission has reason to believe that there is cause to discipline or remove an Administrative Law Judge, it may commence a formal proceeding against the Administrative Law Judge.

3730.5 If the Commission determines not to institute a formal proceeding, it shall so inform the Administrative Law Judge upon his or her inquiry, or if the Commission or its designee previously informed the Administrative Law Judge of the investigation. The Commission also shall give written notice to any

complainant either that there is insufficient cause to proceed, or that the complaint poses a legal issue over which the Commission has no jurisdiction, as appropriate.

- 3730.6 Before instituting a formal proceeding against an Administrative Law Judge, the Commission shall serve the Administrative Law Judge with notice of the investigation and offer the Administrative Law Judge an opportunity to meet with the Commission.
- 3730.7 If the Administrative Law Judge files a request to meet with the Commission within seven (7) days of service of notice of the investigation, the Commission shall meet with the Administrative Law Judge and his or her counsel, if any, for the purpose of considering whether the matter should be disposed of without a proceeding.
- 3730.8 An Administrative Law Judge may voluntarily terminate any investigation or formal proceeding before the Commission by filing with the Clerk a binding notarized statement that the Administrative Law Judge voluntarily resigns or retires from his or her position as an Administrative Law Judge; that he or she wishes to terminate the investigation or formal proceeding without a decision on the merits; and that he or she agrees never again to seek or accept an appointment as an Administrative Law Judge.
- 3730.9 Any person submitting a statement to the Commission pursuant to section 3730.8 shall not be qualified to be appointed as an Administrative Law Judge at any time thereafter.
- 3730.10 If an investigation is concluded without commencement of a formal proceeding, the Commission shall give written notice to the complainant explaining that the matter has been resolved and the nature of that resolution.
- 3730.11 Individuals interviewed by any member of the Commission or persons acting on its behalf during an investigation shall be asked to keep the matter confidential.
- 3730.12 All records and meetings relating to an investigation that does not result in a formal proceeding shall be non-public records of the Commission. All records and meetings relating to an inquiry that results in a formal proceeding, unless otherwise privileged or confidential under law, shall be public records of the Commission.
- 3730.13 If an Administrative Law Judge requests that a record documenting a non-public decision disposing of an inquiry involving that Administrative Law Judge be made public, the Commission shall make that record public within ten (10) days of the request. If an Administrative Law Judge requests that a document other than one documenting the decision from an investigation or complaint be made public, the Commission shall do so if it would serve the interests of justice.

**3731 OATHS OR AFFIRMATIONS**



- 3731.1 Each witness who appears before the Commission in an investigation or proceeding shall swear or affirm to tell the truth and not to disclose the nature of the investigation or of the proceeding or the identity of the Administrative Law Judge involved unless or until the matter is no longer confidential under the provisions of this chapter or other provisions of law.
- 3731.2 Each member of the Commission shall be authorized to administer oaths or affirmations to all witnesses appearing before the Commission.
- 3731.3 Each person appointed by the Commission to assist it shall be required to sign a confidentiality agreement as a condition of that person's participation in any non-public meeting, proceeding, investigation, or other activity.

**3732 SUBPOENAS AND ORDERS FOR INSPECTION OF DOCUMENTS**

- 3732.1 In aid of any investigation or proceeding involving the possible discipline, suspension, or removal of an Administrative Law Judge, or on motion by an Administrative Law Judge who is the subject of a proceeding, the Commission, or any member thereof, may issue a subpoena providing for the inspection of relevant papers, books, records, accounts, documents, transcriptions, and other physical things, and may issue a subpoena for the attendance of a witness to give testimony.
- 3732.2 Whenever a person fails to appear to testify or to produce any papers, books, records, accounts, documents, transcriptions, or other physical things, as required by a subpoena issued pursuant to section 3732.1, the Commission or Administrative Law Judge may petition the Superior Court of the District of Columbia, or any other court of competent jurisdiction, for an order compelling that person to attend, testify, or produce the writings or things required by subpoena.
- 3732.3 Each party is responsible for service of a subpoena it requests in conformity with the law.
- 3732.4 The form, service, issuance, and response to a subpoena shall be governed by the procedures described in the Superior Court Rules of Civil Procedure.
- 3732.5 This section 3732 shall become effective on the effective date of legislation authorizing the Commission to issue subpoenas and authorizing the Commission or an Administrative Law Judge to seek judicial enforcement of the Commission's subpoenas.

**3733 DEPOSITIONS**

- 3733.1 The Commission may order the deposition under oath of any person in aid of any investigation or proceeding.
- 3733.2 To compel a deposition, the Commission, or any party authorized by the Commission to take a deposition, may petition the Superior Court of the District of Columbia, or other court of competent jurisdiction, for an order requiring a person to appear and testify and to produce papers, books, records, accounts, documents, transcriptions, or other physical things before a member of the Commission or a special counsel or other officer designated by the Commission.
- 3733.3 The deposition shall be taken in the form prescribed by the Commission, and shall be subject to any limitations prescribed by the Commission. In the absence of a relevant mandate, prescription or limitation by the Commission, the parties and counsel participating in the deposition shall adhere to the Superior Court Rules of Civil Procedure during the deposition.
- 3733.4 A petition to compel a deposition shall state, without identifying the Administrative Law Judge, the general nature of the pending matter, the name and residence of the person whose testimony or other evidence is desired, and any special directions or other information the Commission may prescribe.
- 3733.5 Depositions shall be taken and returned in the manner prescribed by law under the Superior Court Rules of Civil Procedure.
- 3733.6 This section 3733 shall become effective on the effective date of legislation authorizing the Commission to order depositions and authorizing the Commission to seek judicial enforcement of an order to appear for a deposition.

**3734 FORMAL PROCEEDINGS**

- 3734.1 If the Commission institutes a formal proceeding against an Administrative Law Judge, it shall issue a written notice to the Administrative Law Judge advising him or her that the investigation has led to the institution of a formal proceeding against him or her.
- 3734.2 Unless otherwise ordered by the Commission, each formal proceeding shall be titled as follows:

BEFORE THE  
DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE  
OF ADMINISTRATIVE LAW JUDGES

*In re* [name of Administrative Law Judge], Formal Proceeding Against an  
Administrative Law Judge No. \_\_\_\_

- 3734.3 The notice shall be served by personal service upon the Administrative Law Judge.
- 3734.4 If it appears to the Chairperson of the Commission upon affidavit that, after reasonable effort for a period of ten (10) days, personal service could not be made, service may be made upon the Administrative Law Judge by mailing the notice by registered, certified, or express mail, addressed to the Administrative Law Judge at his or her Office of Administrative Hearings address and at his or her last known home address.
- 3734.5 The notice of formal proceeding shall specify concisely the charges and the alleged basis for the charges, and shall advise the Administrative Law Judge of the following:
- (a) The right to counsel;
  - (b) The most severe action that the Commission proposes to take against the Administrative Law Judge if it concludes that there is cause for discipline or removal;
  - (c) The obligation to file a written answer within twenty (20) days of service of the notice;
  - (d) The person with whom the answer must be filed;
  - (e) The right to an evidentiary hearing; and

- (f) The right to review any material that will be presented to the Commission during the formal proceeding.

- 3734.6 An Administrative Law Judge against whom a formal proceeding has been instituted may be placed on administrative leave at the discretion of the Chief Administrative Law Judge pending the outcome of the formal proceeding.
- 3734.7 An Administrative Law Judge shall file a written answer to a notice of formal proceeding within twenty (20) days of service of the notice.
- 3734.8 In his or her answer, an Administrative Law Judge shall raise every procedural and substantive defense or challenge and every fact or matter in extenuation, exculpation, or mitigation of which the Administrative Law Judge has knowledge or reasonably should have knowledge. Failure to include any such matter in the answer shall preclude the Administrative Law Judge from relying upon it at any point in the formal proceeding or subsequent judicial review.
- 3734.9 The Chairperson or the Commission may extend the time for filing an answer.
- 3734.10 In the interests of justice, the Commission at any time prior to its final decision in a proceeding may amend the notice of formal proceeding or may permit the answer to be amended to conform to proof or otherwise.
- 3734.11 The Administrative Law Judge shall be given a reasonable time to answer an amendment and to present his or her defense against any matter charged in an amendment.
- 3734.12 The notice of proceeding and the answer shall constitute the pleadings. No further pleadings or motions shall be filed, unless expressly authorized by the Commission.

**3735 HEARINGS IN FORMAL PROCEEDINGS**

- 3735.1 Upon the timely filing of an answer, unless good cause to the contrary appears in the answer, or if no timely answer is filed, the Commission shall order an evidentiary hearing to be held before it concerning the matters specified in the notice of formal proceeding.
- 3735.2 The Commission shall set a time and place for the hearing and, at least thirty (30) days prior to the date set, shall mail a notice of the hearing time and place by registered, certified, or express mail to the Administrative Law Judge addressed to the Administrative Law Judge at his or her Office of Administrative Hearings address and his or her last known home address and to the Administrative Law Judge's counsel, if any.
- 3735.3 The Chairperson or the Commission may extend the time for the commencement of a hearing.

- 3735.4 The Commission may rule on the defenses and challenges asserted in the answer at the outset of the hearing or may take them under advisement and rule on them during, at the close of, or after the hearing.
- 3735.5 At least fifteen (15) days before the hearing, the Administrative Law Judge and the Commission shall disclose to each other a list of witnesses that each may call (except rebuttal witnesses) and the documents that each may offer at the hearing (except documents that will be used solely for impeachment). Such documents may be redacted to protect privacy and confidential information, and to remove irrelevant and privileged information, but only to the extent consistent with due process.
- 3735.6 At the time and place set for hearing, the Commission shall proceed with the hearing whether or not the Administrative Law Judge has filed an answer or appears at the hearing.
- 3735.7 The hearing shall be held before the Commission, and evidence shall be received only when a quorum of the Commission is present.
- 3735.8 The Chairperson, or his or her designee, shall control the conduct of the proceeding, which shall be conducted in accordance with the procedures for contested hearings under D.C. Official Code § 2-509 and any other applicable law. In evaluating the weight of any evidence, the Commission shall use the codified rules of evidence applicable in the Superior Court of the District of Columbia once a comprehensive codification occurs, or if no such code exists, the Federal Rules of Evidence.
- 3735.9 The failure of the Administrative Law Judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of facts alleged to constitute cause for discipline or removal, but it may be a basis for an adverse inference.
- 3735.10 Special counsel designated by the Commission may present evidence against the Administrative Law Judge at the hearing.
- 3735.11 The Commission shall keep a complete record of each formal proceeding, including a verbatim record of each hearing. Upon request, a copy of the record of a formal proceeding shall be provided to the Administrative Law Judge at the expense of the District of Columbia.
- 3735.12 The Administrative Law Judge has the right to be represented by counsel in an investigation or formal proceeding. Any such counsel must be an active member of the District of Columbia Bar, or may be admitted to represent the Administrative Law Judge *pro hac vice* by the Commission to the extent such admission would serve the interests of justice.
- 3735.13 The Administrative Law Judge shall be admitted to the hearing unless he or she is incompetent or so disruptive as to make it unduly burdensome for the

Commission to conduct the hearing. If the Administrative Law Judge is not admitted, he or she shall be offered audio and visual access to the hearing.

3735.14 An Administrative Law Judge shall be given every reasonable opportunity to defend himself or herself against the charges at the hearing, including the introduction of evidence and examination and cross-examination of witnesses.

3735.15 **[RESERVED]**

3735.16 If it appears to the Commission at any time during a proceeding that the Administrative Law Judge is not competent to act for himself or herself, the Commission shall seek the appointment of a guardian *ad litem* unless the Administrative Law Judge has a legal representative who will act for him or her.

3735.17 The guardian *ad litem* or legal representative may exercise any right and privilege and make any defense for the Administrative Law Judge with the same force and effect as if exercised or made by the Administrative Law Judge if he or she were competent. Whenever the provisions of this chapter provide for notice to the Administrative Law Judge, that notice shall be given to the guardian *ad litem* or legal representative.

3735.18 Hearings in formal proceedings shall be open to the public, unless otherwise ordered by the Commission in order to avoid unfair prejudice to the persons other than the Administrative Law Judge who is the subject of the formal proceeding.

### **3736 FINDINGS OF FACT AND CONCLUSIONS OF LAW**

3736.1 Within ninety (90) days after the close of the record in any formal proceeding, the Commission shall issue written findings of fact and conclusions of law.

3736.2 A copy of the findings and conclusions shall be served on the Administrative Law Judge and his or her counsel, if any.

3736.3 A copy of the findings and conclusions also shall be filed with the Clerk, together with the entire record.

### **3737 SANCTIONS**

3737.1 If the Commission determines that there is cause for discipline or removal of an Administrative Law Judge, it may sanction the Administrative Law Judge by oral reprimand, written reprimand, suspension without pay, reduction in grade, or removal.

3737.2 The Commission may require that the Administrative Law Judge undergo counseling, training, or rehabilitation as a condition for terminating a suspension or avoiding any disciplinary sanction.

3737.3 Any decision by the Commission imposing any sanction upon a Administrative Law Judge pursuant to this section, suspending an Administrative Law Judge pursuant to sections 3738 and 3739, affirming the imposition of disciplinary action upon an Administrative Law Judge pursuant to section 3740.17, or affirming the summary suspension of an Administrative Law Judge pursuant to section 3741, shall be reviewable only to the same extent as a decision of the District of Columbia Commission on Judicial Disabilities and Tenure giving an evaluation of "Unqualified."

3737.4 During any period of suspension pursuant to this Chapter, an Administrative Law Judge shall remain absent from the Office, unless authorized in writing to enter the premises by the Chief Administrative Law Judge.

**3738 SUMMARY SUSPENSION UPON COMMENCEMENT OF CRIMINAL PROCEEDINGS**

3738.1 Notwithstanding any other provision of this chapter, the Commission shall suspend an Administrative Law Judge with pay if it has probable cause to believe any of the following:

- (a) The Administrative Law Judge has been indicted for any crime that is or would be a felony under federal or District of Columbia law;
- (b) A criminal proceeding has been commenced in any court alleging that the Administrative Law Judge has committed any crime that bears a relationship to his or her position as an Administrative Law Judge; or
- (c) A criminal proceeding has been commenced in any court alleging that the Administrative Law Judge has committed any crime of dishonesty within the meaning of D.C. Official Code § 14-305.

3738.2 To suspend an Administrative Law Judge with pay pursuant to section 3738.1, the Commission shall serve a written notice of suspension upon the Administrative Law Judge. The notice shall inform the Administrative Law Judge of the following:

- (a) The reason for the suspension;
- (b) The beginning date of the suspension;
- (c) The Administrative Law Judge's right to file a written response within ten (10) days of service; and
- (d) The right to counsel.

3738.3 Within ten (10) days of service of the notice of summary suspension, the Administrative Law Judge may file a written response. The response shall address only whether the Administrative Law Judge has been indicted for a felony, or whether a criminal proceeding described in section 3738.1 (b) or (c) has been commenced against him or her. The response shall not address the merits of the underlying charges.

3738.4 The Commission promptly shall review any response filed by the Administrative Law Judge. After such review, if the Commission finds that the preponderance of the evidence does not establish that the Administrative Law Judge has been indicted for a felony or that a criminal proceeding described in section 3738.1(b) or (c) has been commenced against him or her, it shall vacate the summary suspension forthwith. Otherwise, the summary suspension shall remain in effect pending the final outcome of the criminal proceedings. The Commission shall not address the merits of the underlying charge.

### **3739 SUMMARY SUSPENSION UPON CONVICTION**

3739.1 Notwithstanding any other provision of this Chapter, the Commission shall suspend an Administrative Law Judge without pay if it has probable cause to believe any of the following:

- (a) The Administrative Law Judge has been convicted (on any plea) of any crime that is or would be a felony under federal or District of Columbia law;
- (b) The Administrative Law Judge has been convicted (on any plea) of any crime that bears a relationship to his or her position as an Administrative Law Judge; and
- (c) The Administrative Law Judge has been convicted (on any plea) of any crime of dishonesty within the meaning of D.C. Official Code § 14-305.

3739.2 To suspend an Administrative Law Judge without pay pursuant to section 3739.1, the Commission shall serve a written notice of suspension upon the Administrative Law Judge. The notice shall inform the Administrative Law Judge of the following:

- (a) The reason for the suspension;
- (b) The beginning date of the suspension;
- (c) The Administrative Law Judge's right to file a written response within ten (10) days of service; and
- (d) The right to counsel.



- 3739.3 Within ten (10) days of service of the notice of summary suspension pursuant to section 3739.2, the Administrative Law Judge may file a written response. The response shall address only whether the Administrative Law Judge has been convicted of a crime specified in section 3739.1, and shall not address the merits of the underlying charges.
- 3739.4 The Commission promptly shall review any response filed by the Administrative Law Judge. After such review, if the Commission finds that the preponderance of the evidence does not establish that the Administrative Law Judge has been convicted of a crime specified in section 3739.1, it shall vacate the summary suspension forthwith. Otherwise, the summary suspension shall remain in effect pending the outcome of any appeal or any proceeding to remove the Administrative Law Judge. The Commission shall not address the merits of the underlying charge.
- 3739.5 Upon issuance of a final order affirming the conviction, or the running of the time for filing an appeal without any appeal being filed, the Commission shall issue an order summarily removing the Administrative Law Judge from office.
- 3739.6 If criminal proceedings against an Administrative Law Judge who has been suspended pursuant to section 3738.1 or section 3739.1 are terminated in the Administrative Law Judge's favor, the Commission shall vacate the summary suspension, effective on the date of termination.
- 3739.7 If an appellate court vacates or reverses a criminal conviction, and remands the case for further proceedings, the Administrative Law Judge shall be suspended with pay pending the judgment in the remanded proceedings. If the remanded proceedings result in a conviction specified in section 3739.1, the Administrative Law Judge shall be suspended without pay in accordance with this section.
- 3740 CORRECTIVE DISCIPLINE BY THE CHIEF ADMINISTRATIVE LAW JUDGE**
- 3740.1 The Chief Administrative Law Judge may discipline an Administrative Law Judge by issuing an official reprimand to the Administrative Law Judge or by suspending the Administrative Law Judge without pay for a period of nine (9) days or less.
- 3740.2 The Chief Administrative Law Judge may take corrective disciplinary action against an Administrative Law Judge pursuant to section 3740.1 only for cause, as described in section 3729.1.
- 3740.3 The Chief Administrative Law Judge may take corrective disciplinary action against an Administrative Law Judge pursuant to section 3740.1 only in accordance with the procedures set forth in this section 3740.

- 3740.4 Except as provided in section 3741, before taking corrective disciplinary action against an Administrative Law Judge, the Chief Administrative Law Judge must serve a notice of proposed corrective disciplinary action upon the Administrative Law Judge and must provide the Administrative Law Judge an opportunity to respond.
- 3740.5 A notice of proposed corrective disciplinary action issued pursuant to section 3740.4 must contain at least the following information:
- (a) A statement of the factual basis for the proposed corrective disciplinary action;
  - (b) A statement describing the proposed corrective disciplinary action;
  - (c) A statement that the Administrative Law Judge has the right to review any material upon which the proposed corrective disciplinary action is based;
  - (d) A statement of the Administrative Law Judge's right to file a written response; and
  - (e) Any other information required by the Due Process Clause of the Fifth Amendment to the United States Constitution.
- 3740.6 Within five (5) days of service of a notice of proposed corrective disciplinary action, the Administrative Law Judge may file a written response with the Chief Administrative Law Judge.
- 3740.7 For good cause shown, the Chief Administrative Law Judge may extend the five (5) day deadline prescribed in section 3740.6 for one additional period of up to five (5) days.
- 3740.8 After reviewing any response filed under section 3740.6, or after expiration of the time for filing a response (if no response is filed), the Chief Administrative Law Judge shall serve the Administrative Law Judge with a decision on the proposed corrective disciplinary action.
- 3740.9 A decision issued pursuant to section 3740.8 shall state that corrective disciplinary action either shall be taken or shall not be taken and shall contain a statement of the reasons for the Chief Administrative Law Judge's decision. If corrective disciplinary action will be taken, the decision shall state the nature and applicable dates, if any, of the corrective disciplinary action and shall state with specificity the cause upon which the corrective disciplinary action is based.
- 3740.10 If the Chief Administrative Law Judge decides, in the exercise of his or her discretion, to take corrective disciplinary action, he or she may impose the corrective disciplinary action proposed in the notice issued pursuant to section 3740.5, or any less severe corrective disciplinary action, but may not impose a corrective disciplinary action more severe than proposed in the notice.

- 3740.11 Any decision of the Chief Administrative Law Judge imposing corrective disciplinary action shall contain a statement of the Administrative Law Judge's right to appeal to the Commission.
- 3740.12 An Administrative Law Judge may appeal any decision of the Chief Administrative Law Judge to take corrective disciplinary action by filing a notice of appeal with the Commission within fifteen (15) days of service of the decision and serving a copy upon the Chief Administrative Law Judge. The notice of appeal shall state fully every argument of the Administrative Law Judge in support of his or her appeal.
- 3740.13 The corrective disciplinary action imposed by the Chief Administrative Law Judge shall not be stayed pending appeal.
- 3740.14 Within ten (10) days of service of the notice of appeal, the Chief Administrative Law Judge, or his or her designee, may file a response to the notice of appeal with the Commission.
- 3740.15 After receipt of the Chief Administrative Law Judge's response, or the expiration of the deadline for filing a response (if no response is filed), the Commission shall decide the appeal.
- 3740.16. The Commission shall affirm the decision of the Chief Administrative Law Judge unless it finds that there is not substantial evidence in the record to support the Chief Administrative Law Judge's finding of cause. The Commission may not overturn the Chief Administrative Law Judge's exercise of discretion to choose a sanction unless it concludes that the sanction was unlawful.
- 3740.17 If the Commission reverses a suspension without pay imposed by the Chief Administrative Law Judge, the Administrative Law Judge shall receive any pay and other benefits that were lost as the result of the suspension.
- 3740.18 A corrective disciplinary action taken against an Administrative Law Judge pursuant to this section shall not preclude the Commission from taking any action authorized by sections 3730 to 3739, including the imposition of any additional sanction upon the Administrative Law Judge.

**3741 SUMMARY SUSPENSION OF AN ADMINISTRATIVE LAW JUDGE**

- 3741.1 The Chief Administrative Law Judge may summarily suspend an Administrative Law Judge without pay if there is cause for discipline or removal pursuant to section 3729 and the Administrative Law Judge's conduct:
- (a) Threatens the integrity of the Office's operations; or
  - (b) Constitutes an immediate hazard to the Office or its employees, to the Administrative Law Judge, or to the public.

- 3741.2 Any summary suspension imposed by the Chief Administrative Law Judge may last no longer than nine (9) days.
- 3741.3 An Administrative Law Judge who is notified by a written or oral directive of a summary suspension shall immediately leave his or her duty station and the premises of the Office.
- 3741.4 With a reasonable time after the summary suspension, but no later than 48 hours thereafter, the Chief Administrative Law Judge shall serve upon the Administrative Law Judge a written notice that includes all of the following information:
- (a) A statement of the reasons for the summary suspension;
  - (b) The effective date of the summary suspension and its duration;
  - (c) A statement that the Administrative Law Judge has the right to review any material upon which the summary suspension was based;
  - (d) A statement of the Administrative Law Judge's right to present a written response for review by the Commission; and
  - (e) Any other information required by the Due Process Clause of the Fifth Amendment.
- 3741.5 Within forty-eight (48) hours after receipt of the notice required by section 3741.4, the Administrative Law Judge may file with the Commission a written response to the notice. That response shall raise every defense, fact, or matter in extenuation, exculpation, or mitigation of which the Administrative Law Judge has knowledge or reasonably should have knowledge that is relevant to the determination of cause or the legality of the summary suspension. An Administrative Law Judge's failure to file a response within the deadline established by this subsection shall constitute a waiver of all rights to challenge the summary suspension.
- 3741.6 Upon review of the notice of summary suspension and the Administrative Law Judge's response, the Commission shall determine whether the summary suspension complies with the requirements of this section. In its discretion, the Commission may require the Administrative Law and the Chief Administrative Law Judge, or his or her designee, to appear before it, and it may receive relevant testimonial and documentary evidence.
- 3741.7 The summary suspension shall not be stayed during the pendency of the matter before the Commission. If the Commission determines that the summary suspension did not comply with the requirements of this section, it shall issue an order vacating the summary suspension and restoring any pay and benefits lost by the Administrative Law Judge during the suspension.

3741.8 Summary suspension of an Administrative Law Judge pursuant to this section shall not preclude the Commission from taking any action authorized by sections 3730 to 3739, including the imposition of an additional sanction upon the Administrative Law Judge.

3742-3798 [RESERVED]

3799 **DEFINITIONS**

When used in this chapter, the following words shall have the following meanings:

Act – The Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.01 *et seq.*)

Administrative Law Judge – An Administrative Law Judge of the Office of Administrative Hearings.

Applicant – Any person seeking to be appointed or reappointed as an Administrative Law Judge.

Chief Administrative Law Judge – The Chief Administrative Law Judge of the Office or any person serving as Acting Chief Administrative Law Judge or interim Chief Administrative Law Judge of the Office.

Clerk – The Clerk of the Office.

Commission – The Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings.

Experience in the practice of law – Includes service as a hearing officer.

Hearing officer – An individual, other than an agency director or member of the governing board or body of an agency, whose permanent duties as an employee of the District of Columbia on the day prior to the Act's becoming applicable to his or her agency, consisted in whole or substantial part of regularly adjudicating administrative matters as required by law. "Hearing officer" includes, without limitation, any person with a position bearing the title "Hearing Officer," "Hearing Examiner," "Attorney Examiner," "Administrative Law Judge," "Administrative Judge," or "Adjudication Specialist." The term "hearing officer" does not include any employee holding an intermittent service appointment, a temporary appointment of less than one year, or a term appointment of less than one year.

Investigation – An inquiry to determine whether a proceeding should be instituted.

Legal holiday – Includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the District of Columbia, or any day on which the Office is closed.

Member of the District of Columbia Bar – 1) An active member in good standing of the District of Columbia Bar; 2) a judicial member in good standing of the District of Columbia Bar; or 3) any person eligible to practice law in the District of Columbia pursuant to Rule 49 (c)(4) of the Rules of the District of Columbia Court of Appeals while employed by the Government of the District of Columbia.

Misrepresentation – An untrue statement, orally or in writing, or an omission that is materially misleading.

Office – The Office of Administrative Hearings.

Proceeding – A formal proceeding, initiated by a Notice of Proceeding, to hear and determine charges as to an Administrative Law Judge's conduct or health.

Special Counsel – Any member of the District of Columbia Bar retained by the Commission to assist it, including without limitation, by investigating, prosecuting, or advising on any matter.

Vacancy -- An unfilled available position as an Administrative Law Judge.

Voting member – One of the three voting members of the Commission appointed pursuant to section 10(a) of the Act, D.C. Official Code § 2-1831.07(a).

Any person desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Mark Jordan, Chief of Staff to the Deputy Mayor for Public Safety and Justice, N.W., John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 327, Washington, D.C. 20004. Copies of these proposed rules may be obtained without charge at the above address.